Taxation of Chargeable Gains Act 1992

1992 CHAPTER 12

An Act to consolidate certain enactments relating to the taxation of chargeable gains. [6th March 1992]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Modifications etc. (not altering text)

C1 Act applied (with modifications) by S.I. 1992/415, **reg. 3** (with regs. 4-7)
Power to extend conferred (27.7.1993 with application as mentioned in s. 165(1) of the amending Act) by 1993 c. 34, s. 134, **Sch. 15 para. 4(10)**
Power to extend conferred (27.7.1993 with application as mentioned in s. 165(1) of the amending Act) by 1993 c. 34, s. 165, **Sch. 16 para. 3(3)(b)**
Act modified (27.7.1993 with application as mentioned in s. 165(1) of the amending Act) by 1993 c. 34, s. 169, **Sch. 17 paras. 2(1)**, 4(1)

C2 Act modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), **Sch. 24 paras. 2(1)**, **9(1)(6)-(8)**, **11(4)**

C3 Act applied (with effect in accordance with reg. 1(1) of the amending S.I.) by The Lloyds Underwriters (Tax) (1991-92) Regulations 1994 (S.I. 1994/728), **reg. 3(1)** (with reg. 1(2))

C4 Act modified (3.5.1994) by Finance Act 1994 (c. 9), **s. 173(2)(c)** (with s. 173(1))

C5 Act applied (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 1(2)**

C6 Act modified (19.9.1994) by Coal industry Act 1994 (c. 21), Sch. 4 paras. 2(1), 9(1) (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, **Sch.**

C7 Act modified (retrospective to 29.11.1994) by Finance Act 1995 (c. 4), **s. 154(1)**(3)

C8 Act applied (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), **art. 20(7)**

C9 Act extended (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), **art. 18(3)**

C10 Act modified by Income and Corporation Taxes Act 1988 (c. 1), s. 737C(11A) (as inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(3)**)

C11 Act applied by Income and Corporation Taxes Act 1988 (c. 1), Sch. 15B para 8(5) (as inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 71(2), **Sch. 15**)

C12 Act modified (with effect in accordance with s. 126(9) of the amending Act) by Finance Act 1995 (c. 4), s. 126, **Sch. 23 para. 1(1)**

C13 Act modified (with effect in accordance with s. 103(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 113(2)**

C14 Act modified (retrospective to 31.12.1995) by Finance Act 1996 (c. 8), **s. 203(10)**

C15 Act extended (with modifications) and applied (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **s. 92(4)-(6)** (with Sch. 10, Sch. 11, Sch. 15)

C16 Act extended and applied (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **s. 93(4)-(13)** (with Sch. 10, Sch. 11, Sch. 15)

C17 Act modified (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 98, **Sch. 10 para. 5(4)**

C18 Act applied (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 102, **Sch. 13 paras. 13(6)**, **15(1)**

C19 Act applied (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 paras. 8(11)**, **22(4)**, **26(2)**

C20 Act modified (19.3.1997) by Finance Act 1997 (c. 16), Sch. 12 para. 12(1)(2)(3)(7), 13, **14** (with Sch. 12 para. 17)

C21 Act extended (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **reg. 3** (with regs. 5-8, 20-23) (as substituted (8.8.1997) by S.I. 1997/1715, regs. 1, 3)

C22 Act modified (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), **regs. 5(1)**, **6(1)**, **7(1)**, **8(1)** (with regs. 4, 5(2)(3)(k), 6(2), 7(2)(3), 8(2)) (as amended (8.8.1997) by S.I. 1997/1715, regs. 1, 4, 5)

C23 Act modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), regs. 1, **36-39**

C24 Act modified by Finance Act 1996 (c. 8), **s. 92(7)-(11)** (as inserted (with effect in accordance with **s. 65(8)** of the amending Act) by Finance Act 1999 (c. 16), s. 65(7))

Commencement Information

I1 Act partly in force at Royal Assent and otherwise in force or coming into force as mentioned in s.289.

PART I

CAPITAL GAINS TAX AND CORPORATION TAX ON CHARGEABLE GAINS

General

1 The charge to tax.

(1) Tax shall be charged in accordance with this Act in respect of capital gains, that is to say chargeable gains computed in accordance with this Act and accruing to a person on the disposal of assets.

(2) Companies shall be chargeable to corporation tax in respect of chargeable gains accruing to them in accordance with section 6 of the Taxes Act and the other provisions of the Corporation Tax Acts.

(3) Without prejudice to subsection (2), capital gains tax shall be charged for all years of assessment in accordance with the following provisions of this Act.

Capital gains tax

2 Persons and gains chargeable to capital gains tax, and allowable losses.

(1) Subject to any exceptions provided by this Act, and without prejudice to sections 10 and 276, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment during any part of which he is resident in the United Kingdom, or during which he is ordinarily resident in the United Kingdom.

(2) Capital gains tax shall be charged on the total amount of chargeable gains accruing to the person chargeable in the year of assessment, after deducting—

(a) any allowable losses accruing to that person in that year of assessment, and

(b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous year of assessment, any allowable losses accruing to that person in any previous year of assessment (not earlier than the year 1965-66).

(3) Except as provided by section 62, an allowable loss accruing in a year of assessment shall not be allowable as a deduction from chargeable gains accruing in any earlier year of assessment, and relief shall not be given under this Act more than once in respect of any loss or part of a loss, and shall not be given under this Act if and so far as relief has been or may be given in respect of it under the Income Tax Acts.

[F1(4) Where any amount is treated by virtue of any of sections 77, 86, 87 and 89(2) (read, where applicable, with section 10A) as an amount of chargeable gains accruing to any person in any year of assessment—

(a) that amount shall be disregarded for the purposes of subsection (2) above; and

(b) the amount on which that person shall be charged to capital gains tax for that year (instead of being the amount given by that subsection) shall be the sum of the amounts specified in subsection (5) below.

(5) Those amounts are—

(a) the amount which after—

(i) making any deductions for which subsection (2) provides, and

(ii) applying any reduction in respect of taper relief under section 2A,

is the amount given for the year of assessment by the application of that subsection in accordance with subsection (4)(a) above; and

(b) every amount which is treated by virtue of sections 77, 86, 87 and 89(2) (read, where applicable, with section 10A) as an amount of chargeable gains accruing to the person in question in that year.**]**

Textual Amendments

F1 S. 2(4)(5) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 2**

[F2 2A Taper relief.

(1) This section applies where, for any year of assessment—

(a) there is, in any person's case, an excess of the total amount referred to in subsection (2) of section 2 over the amounts falling to be deducted from that amount in accordance with that subsection; and

(b) the excess is or includes an amount representing the whole or a part of any chargeable gain that is eligible for taper relief.

(2) The amount on which capital gains tax is taken to be charged by virtue of section 2(2) shall be reduced to the amount computed by—

(a) applying taper relief to so much of every chargeable gain eligible for that relief as is represented in the excess;

(b) aggregating the results; and

(c) adding to the aggregate of the results so much of every chargeable gain not eligible for taper relief as is represented in the excess.

(3) Subject to the following provisions of this Act, a chargeable gain is eligible for taper relief if—

(a) it is a gain on the disposal of a business asset with a qualifying holding period of at least one year; or

(b) it is a gain on the disposal of a non-business asset with a qualifying holding period of at least three years.

(4) Where taper relief falls to be applied to the whole or any part of a gain on the disposal of a business or non-business asset, that relief shall be applied by multiplying the amount of that gain or part of a gain by the percentage given by the table in subsection (5) below for the number of whole years in the qualifying holding period of that asset.

(5) That table is as follows—

Gains on disposals of business assets		**Gains on disposals of non-business assets**	
Number of whole years in qualifying holding period	**Percentage of gain chargeable**	**Number of whole years in qualifying holding period**	**Percentage of gain chargeable**
1	92.5	—	—
2	85	—	—
3	77.5	3	95
4	70	4	90
5	62.5	5	85
6	55	6	80
7	47.5	7	75
8	40	8	70
9	32.5	9	65
10 or more	25	10 or more	60

(6) The extent to which the whole or any part of a gain on the disposal of a business or non-business asset is to be treated as represented in the excess mentioned in subsection (1) above shall be determined by treating deductions made in accordance with section 2(2)(a) and (b) as set against chargeable gains in such order as results in the largest reduction under this section of the amount charged to capital gains tax under section 2.

(7) Schedule A1 shall have effect for the purposes of this section.

(8) Subject to paragraph 2(4) of that Schedule **[**F3and paragraph 3 of Schedule 5BA**]**, references in this section to the qualifying holding period of an asset are references—

(a) except in the case of an asset falling within subsection (9) below, to the period after 5th April 1998 for which that asset had been held at the time of its disposal; and

(b) in the case of an asset falling within that subsection, to the period mentioned in paragraph (a) above plus one year.

(9) An asset falls within this subsection if—

(a) the time which, for the purposes of paragraph 2 of Schedule A1, is the time when the asset is taken to have been acquired by the person making the disposal is a time before 17th March 1998; and

(b) there is no period which in the case of that asset is a period which by virtue of paragraph 11 or 12 of that Schedule does not count for the purposes of taper relief.**]**

Textual Amendments

F2 S. 2A inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 121(1)**

F3 Words in s. 2A(8) inserted (27.7.1999) by Finance Act 1999 (c. 16), **s. 72(3)(a)**

3 Annual exempt amount.

(1) An individual shall not be chargeable to capital gains tax in respect of so much of his taxable amount for any year of assessment as does not exceed the exempt amount for the year.

(2) Subject to subsection (3) below, the exempt amount for any year of assessment shall be £5,500.

(3) If the retail prices index for the month of **[**F4September**]** preceding a year of assessment is higher than it was for the previous **[**F4September**]**, then, unless Parliament otherwise determines, subsection (2) above shall have effect for that year as if for the amount specified in that subsection as it applied for the previous year (whether by virtue of this subsection or otherwise) there were substituted an amount arrived at by increasing the amount for the previous year by the same percentage as the percentage increase in the retail prices index and, if the result is not a multiple of £100, rounding it up to the nearest amount which is such a multiple.

(4) The Treasury shall, before each year of assessment, make an order specifying the amount which by virtue of this section is the exempt amount for that year.

[F5(5) For the purposes of this section an individual's taxable amount for any year of assessment is the amount which, after—

(a) making every deduction for which section 2(2) provides,

(b) applying any reduction in respect of taper relief under section 2A, and

(c) adding any amounts falling to be added by virtue of section 2(5)(b),

is (apart from this section) the amount for that year on which that individual is chargeable to capital gains tax in accordance with section 2.

(5A) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment is equal to or less than the exempt amount for that year, no deduction shall be made for that year in respect of—

(a) any allowable losses carried forward from a previous year; or

(b) any allowable losses carried back from a subsequent year in which the individual dies.

(5B) Where, in the case of any individual, the amount of the adjusted net gains for any year of assessment exceeds the exempt amount for the year, the deductions made for that year in respect of allowable losses falling within subsection (5A)(a) or (b) above shall not be greater than the excess.

(5C) In subsections (5A) and (5B) above the references, in relation to any individual's case, to the adjusted net gains for any year are references to the amount given in his case by—

(a) taking the amount for that year from which the deductions for which section 2(2)(a) and (b) provides are to be made;

(b) deducting only the amounts falling to be deducted in accordance with section 2(2)(a); and

(c) in a year in which any amount falls to be brought into account by virtue of section 2(5)(b), adding whichever is the smaller of the exempt amount for that year and the amount falling to be so brought into account.**]**

(6) Where in a year of assessment—

(a) the amount of chargeable gains accruing to an individual does not exceed the exempt amount for the year, and

(b) the aggregate amount or value of the consideration for all the disposals of assets made by him (other than disposals gains accruing on which are not chargeable gains) does not exceed an amount equal to twice the exempt amount for the year,

a statement to the effect of paragraphs (a) and (b) above shall, unless the inspector otherwise requires, be sufficient compliance with any notice under section 8 of the Management Act requiring the individual to make a return of the chargeable gains accruing to him in that year.

(7) For the year of assessment in which an individual dies and for the next 2 following years, subsections (1) to (6) above shall apply to his personal representatives as they apply to an individual.

[F6(7A) As they apply by virtue of subsection (7) above—

(a) subsection (5A) has effect with the omission of paragraph (b), and

(b) subsection (5B) has effect with the omission of the words "or (b)".**]**

(8) Schedule 1 shall have effect as respects the application of this section to trustees.

Textual Amendments

F4 Words in s. 3(3) substituted (27.7.1993 with effect for the years 1994-95 and subsequent years as mentioned in s. 83(2)) by 1993 c. 34, **s. 83(1)**

F5 S. 3(5)(5A)(5B)(5C) substituted for s. 3(5) (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 3**

F6 S. 3(7A) inserted (retrospectively) by Finance Act 2003 (c. 14), Sch. 28 paras. 3(4), **8**

Modifications etc. (not altering text)

C25 S. 3 amended (for the year 1993-1994) by S.I. 1993/760, **art. 2**
S. 3 modified (for the year 1993-1994) by 1993 c. 34, **s. 82**

C26 S. 3(2) sum amended (for the year 1994-95) by Finance Act 1994 (c. 9), **s. 90**

C27 S. 3(2) sum amended (for the year 1996-97) by The Capital Gains Tax (Annual Exempt Amount) Order 1995 (S.I. 1995/3033), **art. 2**

C28 S. 3(2) sum amended (for the year 1997-98) by The Capital Gains Tax (Annual Exempt Amount) Order 1996 (S.I. 1996/2957), **art. 2**

C29 S. 3(2) sum amended (for the year 1998-99) by The Capital Gains Tax (Annual Exempt Amount) Order 1998 (S.I. 1998/757), **art. 2**

C30 S. 3(2) sum amended (for the year 1999-2000) by The Capital Gains Tax (Annual Exempt Amount) Order 1999 (S.I. 1999/591), **art. 2**

C31 S. 3(3) excluded (for the year 1994-95) by Finance Act 1994 (c. 9), **s. 90**

4 Rates of capital gains tax.

(1) Subject to the provisions of this section F7... , the rate of capital gains tax in respect of gains accruing to a person in a year of assessment shall be equivalent to the **[**F8lower rate**]** of income tax for the year.

[F9(1AA) The rate of capital gains tax in respect of gains accruing to—

(a) the trustees of a settlement, or

(b) the personal representatives of a deceased person,

in a year of assessment shall be equivalent to the rate which for that year is **[**F10the rate applicable to trusts under section 686 of the Taxes Act**]**.**]**

F11(1A) . . . . . .

F11(1B) . . . . . .

(2) If income tax is chargeable at the higher rate **[**F12or the Schedule F upper rate**]** in respect of any part of the income of an individual for a year of assessment, the rate of capital gains tax in respect of gains accruing to him in the year shall be equivalent to the higher rate.

(3) If no income tax is chargeable at the higher rate **[**F13or the Schedule F upper rate**]** in respect of the income of an individual for a year of assessment, but the amount on which he is chargeable to capital gains tax exceeds the unused part of his basic rate band, the rate of capital gains tax on the excess shall be equivalent to the higher rate of income tax for the year.

F14(3A) . . . . . .

F14(3B) . . . . . .

(4) The reference in subsection (3) above to the unused part of an individual's basic rate band is a reference to the amount by which [F15]... the basic rate limit exceeds his total income (as reduced by any deductions made in accordance with the Income Tax Acts).

Textual Amendments

F7 Words in s. 4(1) repealed (with effect in accordance with s. 120(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(29)**

F8 Words in s. 4(1) substituted (with effect in accordance with s. 26(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 26(2)**

F9 S. 4(1AA) inserted (with application in accordance with s. 120(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 120(1)**

F10 Words in s. 4(1AA) substituted (with effect in accordance with s. 26(6) of the amending Act) by Finance Act 1999 (c. 16), **s. 26(3)**

F11 S. 4(1A)(1B) repealed (with effect in accordance with s. 26(6) of the amending Act) by Finance Act 1999 (c. 16), s. 26(4), **Sch. 20 Pt. III(1)**

F12 Words in s. 4(2) inserted (with effect in accordance with Sch. 4 para. 24(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 24(2)**

F13 Words in s. 4(3) inserted (with effect in accordance with Sch. 4 para. 24(6) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 24(3)**

F14 S. 4(3A)(3B) repealed (with effect in accordance with s. 26(6) of the amending Act) by Finance Act 1999 (c. 16), s. 26(4), **Sch. 20 Pt. III(1)**

F15 Words in s. 4(4) repealed (with effect in accordance with s. 26(6) of the amending Act) by Finance Act 1999 (c. 16), s. 26(5), **Sch. 20 Pt. III(1)**

[F16]5 Accumulation and discretionary settlements.

. . . . . .

Textual Amendments

F16 S. 5 repealed (with effect in accordance with s. 120(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(29)**

6 Other special cases.

[F17](1) . . . . . .

(2) Where for any year of assessment—

(a) by virtue of section 549(2) of the Taxes Act (gains under life policy or life annuity contract) a deduction of an amount is made from a person's total income for the purposes of excess liability, or

[F18](b) . . . . . .

(c) by virtue of section 699(1) of that Act (income accruing before death) the residuary income of an estate is treated as reduced so as to reduce a person's income by any amount for those purposes,

section 4(4) shall have effect as if his income for the year were reduced by that amount.

(3) Where by virtue of section 547(1)(a) of the Taxes Act (gains from insurance policies etc.) a person's total income for a year of assessment is deemed to include any amount or amounts—

(a) section 4(4) shall have effect as if his total income included not the whole of the amount or amounts concerned but only the appropriate fraction within the meaning of section 550(3) of that Act, and

(b) if relief is given under section 550 of that Act and the calculation required by section 550(2)(b) does not involve the higher rate of income tax, section 4(2) and (3) shall have effect as if no income tax were chargeable at the higher rate **[**F19or the Schedule F upper rate**]** in respect of his income.

(4) Nothing in subsection (1) above shall be taken to reduce, and nothing in subsections (2) and (3) above shall be taken to increase, the amount of the deduction which a person is entitled to make from his total income by virtue of any provision of Chapter I of Part VII of the Taxes Act which limits any allowance by reference to the level of his total income.

Textual Amendments

F17 S. 6(1) repealed (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(8)**

F18 S. 6(2)(b) repealed (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(8)**

F19 Words in s. 6(3)(b) inserted (with effect in accordance with Sch. 4 para. 25(2) of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 4 para. 25(1)**

F20 7 Time for payment of tax.

. . . . . .

Textual Amendments

F20 S. 7 repealed (with effect in accordance with s. 103(7) of the amending Act) by Finance Act 1995 (c. 4), s. 115(12), **Sch. 29 Pt. VIII(14)**

Corporation tax

8 Company's total profits to include chargeable gains.

(1) Subject to the provisions of this section and section 400 of the Taxes Act, the amount to be included in respect of chargeable gains in a company's total profits for any accounting period shall be the total amount of chargeable gains accruing to the company in the accounting period after deducting—

(a) any allowable losses accruing to the company in the period, and

(b) so far as they have not been allowed as a deduction from chargeable gains accruing in any previous accounting period, any allowable losses previously accruing to the company while it has been within the charge to corporation tax.

(2) For the purposes of corporation tax in respect of chargeable gains, "allowable loss" does not include a loss accruing to a company in such circumstances that if a gain accrued the company would be exempt from corporation tax in respect of it.

(3) Except as otherwise provided by this Act or any other provision of the Corporation Tax Acts, the total amount of the chargeable gains to be included in respect of chargeable gains in a company's total profits for any accounting period shall for purposes of corporation tax be computed in accordance with the principles applying for capital gains tax, all questions—

(a) as to the amounts which are or are not to be taken into account as chargeable gains or as allowable losses, or in computing gains or losses, or charged to tax as a person's gain; or

(b) as to the time when any such amount is to be treated as accruing,

being determined in accordance with the provisions relating to capital gains tax as if accounting periods were years of assessment.

(4) Subject to subsection (5) below, where the enactments relating to capital gains tax contain any reference to income tax or to the Income Tax Acts the reference shall, in relation to a company, be construed as a reference to corporation tax or to the Corporation Tax Acts; but—

(a) this subsection shall not affect the references to income tax in section 39(2); and

(b) in so far as those enactments operate by reference to matters of any specified description, account shall for corporation tax be taken of matters of that description which are confined to companies, but not of any which are confined to individuals.

(5) This Act as it has effect in accordance with this section shall not be affected in its operation by the fact that capital gains tax and corporation tax are distinct taxes but, so far as is consistent with the Corporation Tax Acts, shall apply in relation to capital gains tax and corporation tax on chargeable gains as if they were one tax, so that, in particular, a matter which in a case involving 2 individuals is relevant for both of them in relation to capital gains tax shall in a like case involving an individual and a company be relevant for him in relation to that tax and for it in relation to corporation tax.

(6) Where assets of a company are vested in a liquidator under section 145 of the [M1]Insolvency Act 1986 or Article 123 of the [M2]Insolvency (Northern Ireland) Order 1989 or otherwise, this section and the enactments applied by this section shall apply as if the assets were vested in, and the acts of the liquidator in relation to the assets were the acts of, the company (acquisitions from or disposals to him by the company being disregarded accordingly).

Marginal Citations

M1 1986 c. 45.

M2 S.I.1989/2405 (N.I.19).

Residence etc.

9 Residence, including temporary residence.

(1) In this Act "resident" and "ordinarily resident" have the same meanings as in the Income Tax Acts.

(2) Section 207 of the Taxes Act (disputes as to domicile or ordinary residence) shall apply in relation to capital gains tax as it applies for the purposes mentioned in that section.

(3) Subject to **[**F21sections 10(1) and 10A**]**, an individual who is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence in the United Kingdom shall be charged to capital gains tax on chargeable gains accruing in any year of assessment if and only if the period (or the sum of the periods) for which he is resident in the United Kingdom in that year of assessment exceeds 6 months.

F22**[**(4) The question whether for the purposes of subsection (3) above an individual is in the United Kingdom for some temporary purpose only and not with any view or intent to establish his residence there shall be decided without regard to any living accommodation available in the United Kingdom for his use.**]**

Textual Amendments

F21 Words in s. 9(3) substituted (with effect in accordance with s. 127(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 127(2)**

F22 S. 9(4) inserted (27.7.1993 with effect for the year 1993-94 and subsequent years of assessment as mentioned in s. 208(4)) by 1993 c. 34, **s. 208(2)(4)**

10 Non-resident with United Kingdom branch or agency.

(1) Subject to any exceptions provided by this Act, a person shall be chargeable to capital gains tax in respect of chargeable gains accruing to him in a year of assessment in which he is not resident and not ordinarily resident in the United Kingdom but is carrying on a trade in the United Kingdom through a branch or agency, and shall be so chargeable on chargeable gains accruing on the disposal—

(a) of assets situated in the United Kingdom and used in or for the purposes of the trade at or before the time when the capital gain accrued, or

(b) of assets situated in the United Kingdom and used or held for the purposes of the branch or agency at or before that time, or assets acquired for use by or for the purposes of the branch or agency.

(2) Subsection (1) above does not apply unless the disposal is made at a time when the person is carrying on the trade in the United Kingdom through a branch or agency.

(3) For the purposes of corporation tax the chargeable profits of a company not resident in the United Kingdom but carrying on a trade or vocation there through a branch or agency shall be, or include, such chargeable gains accruing on the disposal of assets situated in the United Kingdom as are by this section made chargeable to capital gains tax in the case of an individual not resident or ordinarily resident in the United Kingdom.

(4) This section shall not apply to a person who, by virtue of Part XVIII of the Taxes Act (double taxation relief agreements), is exempt from income tax or corporation tax chargeable for the chargeable period in respect of the profits or gains of the branch or agency.

(5) This section shall apply as if references in subsections (1) and (2) above to a trade included references to a profession or vocation, but subsection (1) shall not apply in respect of chargeable gains accruing on the disposal of assets only used in or for the purposes of the profession or vocation before 14th March 1989 or only used or held for the purposes of the branch or agency before that date.

(6) In this Act, unless the context otherwise requires, "branch or agency" means any factorship, agency, receivership, branch or management, but does not include any person within the exemptions in section 82 of the Management Act (general agents and brokers).

[F23 10A Temporary non-residents.

(1) This section applies in the case of any individual ("the taxpayer") if—

(a) he satisfies the residence requirements for any year of assessment ("the year of return");

(b) he did not satisfy those requirements for one or more years of assessment immediately preceding the year of return but there are years of assessment before that year for which he did satisfy those requirements;

(c) there are fewer than five years of assessment falling between the year of departure and the year of return; and

(d) four out of the seven years of assessment immediately preceding the year of departure are also years of assessment for each of which he satisfied those requirements.

(2) Subject to the following provisions of this section and section 86A, the taxpayer shall be chargeable to capital gains tax as if—

(a) all the chargeable gains and losses which (apart from this subsection) would have accrued to him in an intervening year,

(b) all the chargeable gains which under section 13 or 86 would be treated as having accrued to him in an intervening year if he had been resident in the United Kingdom throughout that intervening year, and

(c) any losses which by virtue of section 13(8) would have been allowable in his case in any intervening year if he had been resident in the United Kingdom throughout that intervening year,

were gains or, as the case may be, losses accruing to the taxpayer in the year of return.

(3) Subject to subsection (4) below, the gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any gain or loss accruing on the disposal by the taxpayer of any asset if—

(a) that asset was acquired by the taxpayer at a time in the year of departure or any intervening year when he was neither resident nor ordinarily resident in the United Kingdom;

(b) that asset was so acquired otherwise than by means of a relevant disposal which by virtue of section 58, 73 or 258(4) is treated as having been a disposal on which neither a gain nor a loss accrued;

(c) that asset is not an interest created by or arising under a settlement; and

(d) the amount or value of the consideration for the acquisition of that asset by the taxpayer does not fall, by reference to any relevant disposal, to be treated as reduced under section 23(4)(b) or (5)(b), 152(1)(b), 162(3)(b) or 247(2)(b) or (3)(b).

(4) Where—

(a) any chargeable gain that has accrued or would have accrued on the disposal of any asset ("the first asset") is a gain falling (apart from this section) to be treated by virtue of section 116(10) or (11), 134 or 154(2) or (4) as accruing on the disposal of the whole or any part of another asset, and

(b) the other asset is an asset falling within paragraphs (a) to (d) of subsection (3) above but the first asset is not,

subsection (3) above shall not exclude that gain from the gains which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return.

(5) The gains and losses which by virtue of subsection (2) above are to be treated as accruing to the taxpayer in the year of return shall not include any chargeable gain or allowable loss accruing to the taxpayer in an intervening year which, in the taxpayer's case, has fallen to be brought into account for that year by virtue of section 10 or 16(3).

(6) The reference in subsection (2)(c) above to losses allowable in an individual's case in an intervening year is a reference to only so much of the aggregate of the losses that would have been available in accordance with subsection (8) of section 13 for reducing gains accruing by virtue of that section to that individual in that year as does not exceed the amount of the gains that would have accrued to him in that year if it had been a year throughout which he was resident in the United Kingdom.

(7) Where this section applies in the case of any individual, nothing in any enactment imposing any limit on the time within which an assessment to capital gains tax may be made shall prevent any such assessment for the year of departure from being made in the taxpayer's case at any time before the end of two years after the 31st January next following the year of return.

(8) In this section—

"intervening year" means any year of assessment which, in a case where the conditions in paragraphs (a) to (d) of subsection (1) above are satisfied, falls between the year of departure and the year of return;

"relevant disposal", means a disposal of an asset acquired by the person making the disposal at a time when that person was resident or ordinarily resident in the United Kingdom; and

"the year of departure" means the last year of assessment before the year of return for which the taxpayer satisfied the residence requirements.

(9) For the purposes of this section an individual satisfies the residence requirements for a year of assessment if that year of assessment is one during any part of which he is resident in the United Kingdom or during which he is ordinarily resident in the United Kingdom.

(10) This section is without prejudice to any right to claim relief in accordance with any double taxation relief arrangements.**]**

Textual Amendments

F23 S. 10A inserted (with effect in accordance with s. 127(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 127(1)**

11 Visiting forces, agents-general etc.

(1) A period during which a member of a visiting force to whom section 323(1) of the Taxes Act applies is in the United Kingdom by reason solely of his being a member of that force shall not be treated for the purposes of capital gains tax either as a period of residence in the United Kingdom or as creating a change in his residence or domicile.

This subsection shall be construed as one with subsection (2) of section 323 and subsections (4) to (8) of that section shall apply accordingly.

(2) An Agent-General who is resident in the United Kingdom shall be entitled to the same immunity from capital gains tax as that to which the head of a mission so resident is entitled under the [M3]Diplomatic Privileges Act 1964.

(3) Any person having or exercising any employment to which section 320(2) of the Taxes Act (staff of Agents-General etc.) applies (not being a person employed in any trade, business or other undertaking carried on for the purposes of profit) shall be entitled to the same immunity from capital gains tax as that to which a member of the staff of a mission is entitled under the Diplomatic Privileges Act 1964.

(4) Subsections (2) and (3) above shall be construed as one with section 320 of the Taxes Act.

Marginal Citations

M3 1964 c. 81.

12 Foreign assets of person with foreign domicile.

(1) In the case of individuals resident or ordinarily resident but not domiciled in the United Kingdom, capital gains tax shall not be charged in respect of gains accruing to them from the disposal of assets situated outside the United Kingdom (that is, chargeable gains accruing in the year 1965-66 or a later year of assessment) except that the tax shall be charged on the amounts (if any) received in the United Kingdom in respect of those chargeable gains, any such amounts being treated as gains accruing when they are received in the United Kingdom.

(2) For the purposes of this section there shall be treated as received in the United Kingdom in respect of any gain all amounts paid, used or enjoyed in or in any manner or form transmitted or brought to the United Kingdom, and subsections (6) to (9) of section 65 of the Taxes Act (under which income applied outside the United Kingdom in payment of debts is, in certain cases, treated as received in the United Kingdom) shall apply as they would apply for the purposes of subsection (5) of that section if the gain were income arising from possessions out of the United Kingdom.

13 Attribution of gains to members of non-resident companies.

(1) This section applies as respects chargeable gains accruing to a company—

(a) which is not resident in the United Kingdom, and

(b) which would be a close company if it were resident in the United Kingdom.

(2) Subject to this section, every person who at the time when the chargeable gain accrues to the company is resident or ordinarily resident in the United Kingdom, who, if an individual, is domiciled in the United Kingdom, and who **[**F24is a participator**]** in the company, shall be treated for the purposes of this Act as if a part of the chargeable gain had accrued to him.

[F25(3) That part shall be equal to the proportion of the gain that corresponds to the extent of the participator's interest as a participator in the company.

(4) Subsection (2) above shall not apply in the case of any participator in the company to which the gain accrues where the aggregate amount falling under that subsection to be apportioned to him and to persons connected with him does not exceed one twentieth of the gain.**]**

(5) This section shall not apply in relation to—

F26(a) . . . . . .

(b) a chargeable gain accruing on the disposal of assets, being tangible property, whether movable or immovable, or a lease of such property, where the property was used, and used only, for the purposes of a trade carried on by the company wholly outside the United Kingdom, or

(c) a chargeable gain accruing on the disposal of currency or of a debt within section 252(1), where the currency or debt is or represents money in use for the purposes of a trade carried on by the company wholly outside the United Kingdom, or

(d) to a chargeable gain in respect of which the company is chargeable to tax by virtue of section 10(3).

[F27(5A) Where—

(a) any amount of capital gains tax is paid by a person in pursuance of subsection (2) above, and

(b) an amount in respect of the chargeable gain is distributed (either by way of dividend or distribution of capital or on the dissolution of the company) within 2 years from the time when the chargeable gain accrued to the company,

that amount of tax (so far as neither reimbursed by the company nor applied as a deduction under subsection (7) below) shall be applied for reducing or extinguishing any liability of that person to income tax in respect of the distribution or (in the case of a distribution falling to be treated as a disposal on which a chargeable gain accrues to that person) to any capital gains tax in respect of the distribution.**]**

F28(6) . . . . . .

(7) The amount of capital gains tax paid by a person in pursuance of subsection (2) above (so far as **[**F29neither reimbursed by the company nor applied under subsection (5A) above for reducing any liability to tax)**]** shall be allowable as a deduction in the computation under this Act of a gain accruing on the disposal by him of **[**F30any asset representing his interest as a participator in the company**]**.

[F31(7A) In ascertaining for the purposes of subsection (5A) or (7) above the amount of capital gains tax or income tax chargeable on any person for any year on or in respect of any chargeable gain or distribution—

(a) any such distribution as is mentioned in subsection (5A)(b) above and falls to be treated as income of that person for that year shall be regarded as forming the highest part of the income on which he is chargeable to tax for the year;

(b) any gain accruing in that year on the disposal by that person of any asset representing his interest as a participator in the company shall be regarded as forming the highest part of the gains on which he is chargeable to tax for that year;

(c) where any such distribution as is mentioned in subsection (5A)(b) above falls to be treated as a disposal on which a gain accrues on which that person is so chargeable, that gain shall be regarded as forming the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (b) above; and

(d) any gain treated as accruing to that person in that year by virtue of subsection (2) above shall be regarded as the next highest part of the gains on which he is so chargeable, after any gains falling within paragraph (c) above.**]**

(8) So far as it would go to reduce or extinguish chargeable gains accruing by virtue of this section to a person in a year of assessment this section shall apply in relation to a loss accruing to the company on the disposal of an asset in that year of assessment as it would apply if a gain instead of a loss had accrued to the company on the disposal, but shall only so apply in relation to that person; and subject to the preceding provisions of this subsection this section shall not apply in relation to a loss accruing to the company.

(9) If **[**F32a person who is a participator in the company**]** at the time when the chargeable gain accrues to the company is itself a company which is not resident in the United Kingdom but which would be a close company if it were resident in the United Kingdom, an amount equal to the amount apportioned under subsection (3) above out of the chargeable gain **[**F33to the participating company's interest as a participator in the company to which the gain accrues shall be further apportioned among the participators in the participating company according to the extent of their respective interests as participators, and subsection (2) above shall apply to them accordingly in relation to the amounts further apportioned, and so on through any number of companies**]**.

(10) The persons treated by this section as if a part of a chargeable gain accruing to a company had accrued to them shall include trustees **[**F34who are participators in the company, or in any company amongst the participators in which the gain is apportioned under subsection (9) above,**]** if when the gain accrues to the company the trustees are neither resident nor ordinarily resident in the United Kingdom.

[F35(10A) A gain which is treated as accruing to any person by virtue of this section shall not be eligible for taper relief.**]**

(11) If any tax payable by any person by virtue of subsection (2) above is paid by the company to which the chargeable gain accrues, or in a case under subsection (9) above is paid by any such other company, the amount so paid shall not for the purposes of income tax, capital gains tax or corporation tax be regarded as a payment to the person by whom the tax was originally payable.

[F36(11A) For the purposes of this section the amount of the gain or loss accruing at any time to a company that is not resident in the United Kingdom shall be computed (where it is not the case) as if that company were within the charge to corporation tax on capital gains.**]**

[F37(12) In this section "participator", in relation to a company, has the meaning given by section 417(1) of the Taxes Act for the purposes of Part XI of that Act (close companies).

(13) In this section—

(a) references to a person's interest as a participator in a company are references to the interest in the company which is represented by all the factors by reference to which he falls to be treated as such a participator; and

(b) references to the extent of such an interest are references to the proportion of the interests as participators of all the participators in the company (including any who are not resident or ordinarily resident in the United Kingdom) which on a just and reasonable apportionment is represented by that interest.

(14) For the purposes of this section, where—

(a) the interest of any person in a company is wholly or partly represented by an interest which he has under any settlement ("his beneficial interest"), and

(b) his beneficial interest is the factor, or one of the factors, by reference to which that person would be treated (apart from this subsection) as having an interest as a participator in that company,

the interest as a participator in that company which would be that person's shall be deemed, to the extent that it is represented by his beneficial interest, to be an interest of the trustees of the settlement (and not of that person), and references in this section, in relation to a company, to a participator shall be construed accordingly.

(15) Any appeal under section 31 of the Management Act involving any question as to the extent for the purposes of this section of a person's interest as a participator in a company shall be to the Special Commissioners.**]**

Textual Amendments

F24 Words in s. 13(2) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(2)**

F25 S. 13(3)(4) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(3)**

F26 S. 13(5)(a) repealed (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), s. 174(4), **Sch. 41 Pt. V(30)**

F27 S. 13(5A) inserted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(4)**

F28 S. 13(6) repealed (with effect in accordance with Sch. 41 Pt. 5(30) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(30)**

F29 Words in s. 13(7) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(5)(a)**

F30 Words in s. 13(7) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(5)(b)**

F31 S. 13(7A) inserted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(6)**

F32 Words in s. 13(9) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(7)(a)**

F33 Words in s. 13(9) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(7)(b)**

F34 Words in s. 13(10) substituted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(8)**

F35 S. 13(10A) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 4**

F36 S. 13(11A) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 122(4)**

F37 S. 13(12)-(15) inserted (with effect in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(9)**

14 Non-resident groups of companies.

(1) This section has effect for the purposes of section 13.

(2) Sections 171 to 174 and 175(1) shall apply in relation to non-resident companies which are members of a non-resident group of companies, as they apply in relation to companies resident in the United Kingdom which are members of a group of companies.

(3) Sections 178 to 180 shall apply for the purposes of section 13 as if for any reference therein to a group of companies there were substituted a reference to a non-resident group of companies, and as if references to companies were references to companies not resident in the United Kingdom.

(4) For the purposes of this section —

(a) a "non-resident group" of companies—

(i) in the case of a group, none of the members of which are resident in the United Kingdom, means that group, and

(ii) in the case of a group, 2 or more members of which are not resident in the United Kingdom, means the members which are not resident in the United Kingdom;

(b) "group" shall be construed in accordance with section 170 without subsections (2)(a), (9) and (12) to (14).

PART II

GENERAL PROVISIONS RELATING TO COMPUTATION OF GAINS AND ACQUISITIONS AND DISPOSALS OF ASSETS

CHAPTER I

INTRODUCTORY

15 Computation of gains.

(1) The amount of the gains accruing on the disposal of assets shall be computed in accordance with this Part, subject to the other provisions of this Act.

(2) Every gain shall, except as otherwise expressly provided, be a chargeable gain.

16 Computation of losses.

(1) Subject to section 72 of the [M4]Finance Act 1991 and except as otherwise expressly provided, the amount of a loss accruing on a disposal of an asset shall be computed in the same way as the amount of a gain accruing on a disposal is computed.

(2) Except as otherwise expressly provided, all the provisions of this Act which distinguish gains which are chargeable gains from those which are not, or which make part of a gain a chargeable gain, and part not, shall apply also to distinguish losses which are allowable losses from those which are not, and to make part of a loss an allowable loss, and part not; and references in this Act to an allowable loss shall be construed accordingly.

[[F38](2A) A loss accruing to a person in a year of assessment shall not be an allowable loss for the purposes of this Act unless, in relation to that year, he gives a notice to an officer of the Board quantifying the amount of that loss; and sections 42 and 43 of the Management Act shall apply in relation to such a notice as if it were a claim for relief.**]**

(3) A loss accruing to a person in a year of assessment during no part of which he is resident or ordinarily resident in the United Kingdom shall not be an allowable loss for the purposes of this Act unless, under section 10, he would be chargeable to tax in respect of a chargeable gain if there had been a gain instead of a loss on that occasion.

(4) In accordance with section 12(1), losses accruing on the disposal of assets situated outside the United Kingdom to an individual resident or ordinarily resident but not domiciled in the United Kingdom shall not be allowable losses.

Textual Amendments

F38 S. 16(2A) inserted (with effect in accordance with s. 103(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 113(1)**

Marginal Citations

M4 1991 c. 31.

17 Disposals and acquisitions treated as made at market value.

(1) Subject to the provisions of this Act, a person's acquisition or disposal of an asset shall for the purposes of this Act be deemed to be for a consideration equal to the market value of the asset—

(a) where he acquires or, as the case may be, disposes of the asset otherwise than by way of a bargain made at arm's length, and in particular where he acquires or disposes of it by way of gift or on a transfer into settlement by a settlor or by way of distribution from a company in respect of shares in the company, or

(b) where he acquires or, as the case may be, disposes of the asset wholly or partly for a consideration that cannot be valued, or in connection with his own or another's loss of office or employment or diminution of emoluments, or otherwise in consideration for or recognition of his or another's services or past services in any office or employment or of any other service rendered or to be rendered by him or another.

(2) Subsection (1) shall not apply to the acquisition of an asset if—

(a) there is no corresponding disposal of it, and

(b) there is no consideration in money or money's worth or the consideration is of an amount or value lower than the market value of the asset.

Modifications etc. (not altering text)

C32 S. 17 excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 7(4)**

C33 S. 17 excluded (with saving) (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 11(2)**

C34 S. 17(1) excluded (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), arts. 1(2), **18(4)**

18 Transactions between connected persons.

(1) This section shall apply where a person acquires an asset and the person making the disposal is connected with him.

(2) Without prejudice to the generality of section 17(1) the person acquiring the asset and the person making the disposal shall be treated as parties to a transaction otherwise than by way of a bargain made at arm's length.

(3) Subject to subsection (4) below, if on the disposal a loss accrues to the person making the disposal, it shall not be deductible except from a chargeable gain accruing to him on some other disposal of an asset to the person acquiring the asset mentioned in subsection (1) above, being a disposal made at a time when they are connected persons.

(4) Subsection (3) above shall not apply to a disposal by way of gift in settlement if the gift and the income from it is wholly or primarily applicable for educational, cultural or recreational purposes, and the persons benefiting from the application for those purposes are confined to members of an association of persons for whose benefit the gift was made, not being persons all or most of whom are connected persons.

(5) Where the asset mentioned in subsection (1) above is an option to enter into a sale or other transaction given by the person making the disposal a loss accruing to the person acquiring the asset shall not be an allowable loss unless it accrues on a disposal of the option at arm's length to a person who is not connected with him.

(6) Subject to subsection (7) below, in a case where the asset mentioned in subsection (1) above is subject to any right or restriction enforceable by the person making the disposal, or by a person connected with him, then (where the amount of the consideration for the acquisition is, in accordance with subsection (2) above, deemed to be equal to the market value of the asset) that market value shall be—

(a) what its market value would be if not subject to the right or restriction, minus—

(b) the market value of the right or restriction or the amount by which its extinction would enhance the value of the asset to its owner, whichever is the less.

(7) If the right or restriction is of such a nature that its enforcement would or might effectively destroy or substantially impair the value of the asset without bringing any countervailing advantage either to the person making the disposal or a person connected with him or is an option or other right to acquire the asset or, in the case of incorporeal property, is a right to extinguish the asset in the hands of the person giving the consideration by forfeiture or merger or otherwise, the market value of the

asset shall be determined, and the amount of the gain accruing on the disposal shall be computed, as if the right or restriction did not exist.

(8) Subsections (6) and (7) above shall not apply to a right of forfeiture or other right exercisable on breach of a covenant contained in a lease of land or other property, and shall not apply to any right or restriction under a mortgage or other charge.

19 Deemed consideration in certain cases where assets disposed of in a series of transactions.

(1) For the purposes of this Act, in any case where—

(a) by way of 2 or more material transactions which are linked (a series of linked transactions), one person disposes of assets to another person with whom he is connected or to 2 or more other persons with each of whom he is connected, and

(b) the original market value of the assets disposed of by any of the transactions in the series, as determined under section 20, is less than the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series, as so determined,

then, subject to subsection (2) below, the disposal effected by any linked transaction in the series in respect of which the condition in paragraph (b) above is fulfilled shall be deemed to be for a consideration equal to the appropriate portion referred to in that paragraph.

(2) Where the disposal effected by a material transaction is one to which section 58 applies, nothing in subsection (1) above shall affect the amount which, for the purposes of this Act, is the consideration for that disposal.

(3) Subject to subsection (5) below, any reference in this section to a material transaction is a reference to a transaction by way of gift or otherwise; and, for the purposes of this section, 2 or more material transactions are linked if they occur within the period of 6 years ending on the date of the last of them.

(4) This section shall apply or, as the case may be, shall again apply—

(a) when a second material transaction causes a series of linked transactions to come into being; and

(b) whenever, on the occurrence of a further material transaction, an existing series is extended by the inclusion of that transaction (whether or not an earlier transaction ceases to form part of the series);

and all such assessments and adjustments of assessments shall be made as may be necessary to give effect to this section on each such occasion.

(5) Where a member of a group of companies disposes of an asset to another member of the group in circumstances such that, by virtue of section 171, both companies are treated, so far as relates to corporation tax on chargeable gains, as if the consideration for the disposal were of such an amount as would secure that neither a gain nor a loss would accrue, the transaction by which that disposal is effected is not a material transaction; and a disposal in these circumstances is in this section referred to as an "inter-group transfer".

(6) In any case where—

(a) a company ("company A") disposes of an asset by way of a material transaction, and

(b) company A acquired the asset after 19th March 1985 by way of an inter-group transfer, and

(c) the disposal by company A is to a person who is connected with another company ("company B") which at some time after 19th March 1985 disposed of the asset by way of an inter-group transfer, and

(d) either the disposal by way of inter-group transfer which is referred to in paragraph (c) above was the occasion of the acquisition referred to in paragraph (b) above or, between that disposal and that acquisition, there has been no disposal of the asset which was not an inter-group transfer,

then, for the purpose of determining whether subsection (1) above applies in relation to a series of linked transactions, the disposal by company A shall be treated as having been made by company B; but any increase in the consideration for that disposal resulting from the application of subsection (1) above shall have effect with respect to company A.

20 Original market value and aggregate market value for purposes of section 19.

(1) This section has effect for determining the original market value of assets and the aggregate market value of assets as mentioned in subsection (1)(b) of section 19.

(2) Expressions used in this section have the same meaning as in that section.

(3) Where there is a series of linked transactions, the original market value of the assets disposed of by each transaction in the series shall be determined as follows—

(a) if at the time in question the transaction is the most recent in the series, the original market value of the assets disposed of by that transaction is the market value which, apart from section 19, would be deemed to be the consideration for that transaction for the purposes of this Act; and

(b) in the case of any other transaction in the series, the original market value of the assets disposed of by that transaction is the value which, prior to the occurrence of the most recent transaction in the series, was or would have been deemed for the purposes of this Act to be the consideration for the transaction concerned (whether by virtue of the previous operation of section 19, or by virtue of any other provision of this Act).

(4) Subject to subsections (6) to (9) below, in relation to any transaction in a series of linked transactions—

(a) any reference in this section or section 19 to the aggregate market value of the assets disposed of by all the transactions in the series is a reference to what would have been the market value of all those assets for the purposes of this Act if, considering all the assets together, they had been disposed of by one disposal occurring at the time of the transaction concerned; and

(b) any reference in section 19 to the appropriate portion of the aggregate market value of the assets disposed of by all the transactions in the series is a reference to that portion of the market value determined in accordance with paragraph (a) above which it is reasonable to apportion to those of the assets which were actually disposed of by the transaction concerned.

(5) The reference in subsection (4)(a) above to considering all the assets together includes a reference not only to considering them as a group or holding or collection of assets retaining their separate identities but also (if it gives a higher market value) to considering them as brought together, physically or in law, so as to constitute either a

single asset or a number of assets which are distinct from those which were comprised in each of the transactions concerned.

(6) If any of the assets disposed of by all the transactions in a series of linked transactions were acquired after the time of the first of those transactions, then, in the application of subsections (4) and (5) above in relation to each of the transactions in the series—

(a) no account shall be taken of any assets which were acquired after the time of that transaction unless they were acquired by way of an inter-group transfer; and

(b) subject to subsection (7) below, the number of assets of which account is to be taken shall be limited to the maximum number which were held by the person making the disposal at any time in the period beginning immediately before the first of the transactions in the series and ending immediately before the last.

(7) If, before the first of the transactions referred to in paragraph (b) of subsection (6) above, the person concerned (being a company) disposed of any assets by way of an inter-group transfer, the maximum number of assets referred to in that paragraph shall be determined as if the inter-group transfer had occurred after that first transaction.

(8) In the application of subsection (6) above in a case where the assets disposed of are securities, the assets disposed of by any of the transactions in a series of linked transactions shall be identified with assets acquired on an earlier date rather than with assets acquired on a later date.

(9) In subsection (8) above "securities" includes any assets which are of a nature to be dealt in without identifying the particular assets disposed of or acquired.

CHAPTER II

ASSETS AND DISPOSALS OF ASSETS

General provisions

21 Assets and disposals.

(1) All forms of property shall be assets for the purposes of this Act, whether situated in the United Kingdom or not, including—

(a) options, debts and incorporeal property generally, and

(b) any currency other than sterling, and

(c) any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.

(2) For the purposes of this Act—

(a) references to a disposal of an asset include, except where the context otherwise requires, references to a part disposal of an asset, and

(b) there is a part disposal of an asset where an interest or right in or over the asset is created by the disposal, as well as where it subsists before the disposal, and generally, there is a part disposal of an asset where, on a person making a disposal, any description of property derived from the asset remains undisposed of.

Modifications etc. (not altering text)
C35 S. 21(2) applied (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 4(2)**

22 Disposal where capital sums derived from assets.

(1) Subject to sections 23 and 26(1), and to any other exceptions in this Act, there is for the purposes of this Act a disposal of assets by their owner where any capital sum is derived from assets notwithstanding that no asset is acquired by the person paying the capital sum, and this subsection applies in particular to—

(a) capital sums received by way of compensation for any kind of damage or injury to assets or for the loss, destruction or dissipation of assets or for any depreciation or risk of depreciation of an asset,

(b) capital sums received under a policy of insurance of the risk of any kind of damage or injury to, or the loss or depreciation of, assets,

(c) capital sums received in return for forfeiture or surrender of rights, or for refraining from exercising rights, and

(d) capital sums received as consideration for use or exploitation of assets.

(2) In the case of a disposal within paragraph (a), (b), (c) or (d) of subsection (1) above, the time of the disposal shall be the time when the capital sum is received as described in that subsection.

(3) In this section "capital sum" means any money or money's worth which is not excluded from the consideration taken into account in the computation of the gain.

Modifications etc. (not altering text)
C36 S. 22 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para.17**

23 Receipt of compensation and insurance money not treated as a disposal.

(1) If the recipient so claims, receipt of a capital sum within paragraph (a), (b), (c) or (d) of section 22(1) derived from an asset which is not lost or destroyed shall not be treated for the purposes of this Act as a disposal of the asset if—

(a) the capital sum is wholly applied in restoring the asset, or

(b) (subject to subsection (2) below), the capital sum is applied in restoring the asset except for a part of the capital sum which is not reasonably required for the purpose and which is small as compared with the whole capital sum, or

(c) (subject to subsection (2) below), the amount of the capital sum is small, as compared with the value of the asset,

but, if the receipt is not treated as a disposal, all sums which would, if the receipt had been so treated, have been brought into account as consideration for that disposal in the computation of the gain shall be deducted from any expenditure allowable under Chapter III of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

(2) If the allowable expenditure is less than the consideration for the disposal constituted by the receipt of the capital sum (or is nil)—

(a) paragraphs (b) and (c) of subsection (1) above shall not apply, and

(b) if the recipient so elects (and there is any allowable expenditure)—

(i) the amount of the consideration for the disposal shall be reduced by the amount of the allowable expenditure, and

(ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the disposal or any subsequent occasion.

In this subsection "allowable expenditure" means expenditure which, immediately before the disposal, was attributable to the asset under paragraphs (a) and (b) of section 38(1).

(3) If, in a case not falling within subsection (1)(b) above, a part of a capital sum within paragraph (a) or paragraph (b) of section 22(1) derived from an asset which is not lost or destroyed is applied in restoring the asset, then if the recipient so claims, that part of the capital sum shall not be treated as consideration for the disposal deemed to be effected on receipt of the capital sum but shall be deducted from any expenditure allowable under Chapter III of this Part as a deduction in computing a gain on the subsequent disposal of the asset.

(4) If an asset is lost or destroyed and a capital sum received by way of compensation for the loss or destruction, or under a policy of insurance of the risk of the loss or destruction, is within one year of receipt, or such longer period as the inspector may allow, applied in acquiring an asset in replacement of the asset lost or destroyed the owner shall if he so claims be treated for the purposes of this Act—

(a) as if the consideration for the disposal of the old asset were (if otherwise of a greater amount) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

(b) as if the amount of the consideration for the acquisition of the new asset were reduced by the excess of the amount of the capital sum received by way of compensation or under the policy of insurance, together with any residual or scrap value, over the amount of the consideration which he is treated as receiving under paragraph (a) above.

(5) A claim shall not be made under subsection (4) above if part only of the capital sum is applied in acquiring the new asset but if all of that capital sum except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old asset is so applied, then the owner shall if he so claims be treated for the purposes of this Act—

(a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) as if the amount of the consideration for the acquisition of the new asset were reduced by the amount by which the gain is reduced under paragraph (a) of this subsection.

[[F39](6) If a building ("the old building") is destroyed or irreparably damaged, and all or part of a capital sum received by way of compensation for the destruction or damage, or under a policy of insurance of the risk of the destruction or damage, is applied by the recipient in constructing or otherwise acquiring a replacement building situated on other land ("the new building"), then for the purposes of subsections (4) and (5) above each of the old building and the new building shall be regarded as an asset separate from the land on which it is or was situated and the old building shall be treated as lost or destroyed.

(7) For the purposes of subsection (6) above:

(a) references to a building include references to any permanent or semi-permanent structure in the nature of a building; and

(b) the reference to a sum applied in acquiring the new building does not include a reference to a sum applied in acquiring the land on which the new building is situated; and

(c) all necessary apportionments shall be made of any expenditure, compensation or consideration, and the method of apportionment shall be such as is just and reasonable.

(8) This section shall apply in relation to a wasting asset with the following modifications:

(a) paragraphs (b) and (c) of subsection (1) above, and subsection (2) above, shall not apply; and

(b) in subsections (1) and (3) above, the amount of the expenditure from which the deduction is to be made shall be the amount which would have been allowable under Chapter III of this Part if the asset had been disposed of immediately after the application of the capital sum.**]**

Textual Amendments

F39 S. 23(6)(7)(8) substituted for s. 23(6) (with effect in accordance with Sch. 39 para. 3(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 3(2)**

Modifications etc. (not altering text)

C37 S. 23(4) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 3(1)**(3)**

C38 S. 23(4) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 3(1)-(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C39 S. 23(4)(5) modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 10(1)(3)** (with Sch. 7 para. 9(1))

C40 S. 23(5) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 3(2)**(3)**

C41 S. 23(5) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 3(1)-(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

24 Disposals where assets lost or destroyed, or become of negligible value.

(1) Subject to the provisions of this Act and, in particular to section 144, the occasion of the entire loss, destruction, dissipation or extinction of an asset shall, for the purposes of this Act, constitute a disposal of the asset whether or not any capital sum by way of compensation or otherwise is received in respect of the destruction, dissipation or extinction of the asset.

[F40(2) Where the owner of an asset which has become of negligible value makes a claim to that effect:

(a) this Act shall apply as if the claimant had sold, and immediately reacquired, the asset at the time of the claim or (subject to paragraphs (b) and (c) below) at any earlier time specified in the claim, for a consideration of an amount equal to the value specified in the claim.

(b) An earlier time may be specified in the claim if:

(i) the claimant owned the asset at the earlier time; and

(ii) the asset had become of negligible value at the earlier time; and either

(iii) for capital gains tax purposes the earlier time is not more than two years before the beginning of the year of assessment in which the claim is made; or

(iv) for corporation tax purposes the earlier time is on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.

(c) Section 93 of and Schedule 12 to the Finance Act 1994 (indexation losses and transitional relief) shall have effect in relation to an asset to which this section applies as if the sale and reacquisition occurred at the time of the claim and not at any earlier time.**]**

(3) For the purposes of subsections (1) and (2) above, a building and any permanent or semi-permanent structure in the nature of a building may be regarded as an asset separate from the land on which it is situated, but where either of those subsections applies in accordance with this subsection, the person deemed to make the disposal of the building or structure shall be treated as if he had also sold, and immediately reacquired, the site of the building or structure (including in the site any land occupied for purposes ancillary to the use of the building or structure) for a consideration equal to its market value at that time.

Textual Amendments

F40 S. 24(2) substituted (with effect in accordance with Sch. 39 para. 4(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 4(1)**

25 Non-residents: deemed disposals.

(1) Where an asset ceases by virtue of becoming situated outside the United Kingdom to be a chargeable asset in relation to a person, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when it became situated outside the United Kingdom, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Subsection (1) above does not apply—

(a) where the asset becomes situated outside the United Kingdom contemporaneously with the person there mentioned ceasing to carry on a trade in the United Kingdom through a branch or agency, or

(b) where the asset is an exploration or exploitation asset.

(3) Where an asset ceases to be a chargeable asset in relation to a person by virtue of his ceasing to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency, and

(b) immediately to have reacquired it,

at its market value at that time.

(4) Subsection (3) above shall not apply to an asset by reason of a transfer of the whole or part of the long term business of an insurance company to another company if section 139 has effect in relation to the asset by virtue of section 211.

(5) Subsection (3) above does not apply to an asset which is a chargeable asset in relation to the person there mentioned at any time after he ceases to carry on the trade in the United Kingdom through a branch or agency and before the end of the chargeable period in which he does so.

(6) In this section—

"exploration or exploitation asset" means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area, and

"designated area" and "exploration or exploitation activities" have the same meanings as in section 276.

(7) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3).

(8) This section shall apply as if references to a trade included references to a profession or vocation.

26 Mortgages and charges not to be treated as disposals.

(1) The conveyance or transfer by way of security of an asset or of an interest or right in or over it, or transfer of a subsisting interest or right by way of security in or over an asset (including a retransfer on redemption of the security), shall not be treated for the purposes of this Act as involving any acquisition or disposal of the asset.

(2) Where a person entitled to an asset by way of security or to the benefit of a charge or incumbrance on an asset deals with the asset for the purpose of enforcing or giving effect to the security, charge or incumbrance, his dealings with it shall be treated for the purposes of this Act as if they were done through him as nominee by the person entitled to it subject to the security, charge or incumbrance; and this subsection shall apply to the dealings of any person appointed to enforce or give effect to the security, charge or incumbrance as receiver and manager or judicial factor as it applies to the dealings of the person entitled as aforesaid.

(3) An asset shall be treated as having been acquired free of any interest or right by way of security subsisting at the time of any acquisition of it, and as being disposed of free of any such interest or right subsisting at the time of the disposal; and where an asset is acquired subject to any such interest or right the full amount of the liability thereby assumed by the person acquiring the asset shall form part of the consideration for the acquisition and disposal in addition to any other consideration.

27 Disposals in cases of hire-purchase and similar transactions.

A hire-purchase or other transaction under which the use and enjoyment of an asset is obtained by a person for a period at the end of which the property in the asset will or may pass to that person shall be treated for the purposes of this Act, both in relation to that person and in relation to the person from whom he obtains the use and enjoyment of the asset, as if it amounted to an entire disposal of the asset to that person at the beginning of the period for which he obtains the use and enjoyment of the asset, but subject to such adjustments of tax, whether by way of repayment or discharge of tax or otherwise, as may be required where the period for which that person has the use and enjoyment of the asset terminates without the property in the asset passing to him.

28 Time of disposal and acquisition where asset disposed of under contract.

(1) Subject to section 22(2), and subsection (2) below, where an asset is disposed of and acquired under a contract the time at which the disposal and acquisition is made is the time the contract is made (and not, if different, the time at which the asset is conveyed or transferred).

(2) If the contract is conditional (and in particular if it is conditional on the exercise of an option) the time at which the disposal and acquisition is made is the time when the condition is satisfied.

Modifications etc. (not altering text)

C42 S. 28 extended (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 2(2)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C43 S. 28 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 24(9)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

Value shifting

29 General provisions.

(1) Without prejudice to the generality of the provisions of this Act as to the transactions which are disposals of assets, any transaction which under the following subsections is to be treated as a disposal of an asset—

(a) shall be so treated (with a corresponding acquisition of an interest in the asset) notwithstanding that there is no consideration, and

(b) so far as, on the assumption that the parties to the transaction were at arm's length, the party making the disposal could have obtained consideration, or additional consideration, for the disposal, shall be treated as not being at arm's length and the consideration so obtainable, or the additional consideration so obtainable added to the consideration actually passing, shall be treated as the market value of what is acquired.

(2) If a person having control of a company exercises his control so that value passes out of shares in the company owned by him or a person with whom he is connected, or out of rights over the company exercisable by him or by a person with whom he is connected, and passes into other shares in or rights over the company, that shall be a disposal of the shares or rights out of which the value passes by the person by whom they were owned or exercisable.

(3) A loss on the disposal of an asset shall not be an allowable loss to the extent to which it is attributable to value having passed out of other assets, being shares in or rights over a company which by virtue of the passing of value are treated as disposed of under subsection (2) above.

(4) If, after a transaction which results in the owner of land or of any other description of property becoming the lessee of the property there is any adjustment of the rights and liabilities under the lease, whether or not involving the grant of a new lease, which is as a whole favourable to the lessor, that shall be a disposal by the lessee of an interest in the property.

(5) If an asset is subject to any description of right or restriction the extinction or abrogation, in whole or in part, of the right or restriction by the person entitled to enforce it shall be a disposal by him of the right or restriction.

30 Tax-free benefits.

(1) This section has effect as respects the disposal of an asset if a scheme has been effected or arrangements have been made (whether before or after the disposal) whereby—

(a) the value of the asset or a relevant asset has been materially reduced, and

(b) a tax-free benefit has been or will be conferred—

(i) on the person making the disposal or a person with whom he is connected, or

(ii) subject to subsection (4) below, on any other person.

(2) For the purposes of this section, where the asset disposed of by a company ("the disposing company") consists of shares in, or securities of, another company, another asset is a relevant asset if, at the time of the disposal, it is owned by a company associated with the disposing company; but no account shall be taken of any reduction in the value of a relevant asset except in a case where—

(a) during the period beginning with the reduction in value and ending immediately before the disposal by the disposing company, there is no disposal of the asset to any person, other than a disposal falling within section 171(1),

(b) no disposal of the asset is treated as having occurred during that period by virtue of section 178 or 179, and

(c) if the reduction had not taken place but any consideration given for the relevant asset and any other material circumstances (including any consideration given before the disposal for the asset disposed of) were unchanged, the value of the asset disposed of would, at the time of the disposal, have been materially greater;

and in this subsection "securities" has the same meaning as in section 132.

(3) For the purposes of subsection (1)(b) above a benefit is conferred on a person if he becomes entitled to any money or money's worth or the value of any asset in which he has an interest is increased or he is wholly or partly relieved from any liability to which he is subject; and a benefit is tax-free unless it is required, on the occasion on which it is conferred on the person in question, to be brought into account in computing his income, profits or gains for the purposes of income tax, capital gains tax or corporation tax.

(4) This section shall not apply by virtue of subsection (1)(b)(ii) above **[**F41in a case where**]** avoidance of tax was not the main purpose or one of the main purposes of the scheme or arrangements in question.

(5) Where this section has effect in relation to any disposal, any allowable loss or chargeable gain accruing on the disposal shall be calculated as if the consideration for the disposal were increased by such amount as **[**F42is**]** just and reasonable having regard to the scheme or arrangements and the tax-free benefit in question.

(6) Where—

(a) by virtue of subsection (5) above the consideration for the disposal of an asset has been treated as increased, and

(b) the benefit taken into account under subsection (1)(b) above was an increase in the value of another asset,

any allowable loss or chargeable gain accruing on the first disposal of the other asset after the increase in its value shall be calculated as if the consideration for that disposal were reduced by such amount as **[**F43is**]** just and reasonable having regard to the scheme or arrangements in question and the increase made in relation to the disposal mentioned in paragraph (a) above.

(7) References in this section to a disposal do not include references to any disposal falling within section 58(1), 62(4) or 171(1).

(8) References in this section, in relation to any disposal, to a reduction in the value of an asset, where the asset consists of shares owned by a company in another company, shall be interpreted in accordance with sections 31 to 33 and, in those sections, the disposal, the asset and those companies are referred to respectively as "the section 30 disposal", "the principal asset", "the first company" and "the second company".

(9) In relation to a case in which the disposal of an asset precedes its acquisition the references in subsections (1)(a) and (2) above to a reduction shall be read as including a reference to an increase.

Textual Amendments

F41 Words in s. 30(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 46**

F42 Word in s. 30(5) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 47(a)**

F43 Word in s. 30(6) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 47(a)**

Modifications etc. (not altering text)

C44 S. 30 excluded (retrospective to 5.11.2993) by Finance Act 1994 (c. 9), s. 252(2), **Sch. 24 para. 4(1)**

C45 S. 30 excluded (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 4** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C46 S. 30 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 9(1)**

C47 S. 30(5) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 4(2)**(3)**

C48 S. 30(5) excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 9(3)**

31 Distributions within a group followed by a disposal of shares.

(1) The references in section 30 to a reduction in the value of an asset, in the case mentioned in subsection (8) of that section, do not include a reduction attributable to the payment of a dividend by the second company at a time when it and the first company are associated, except to the extent (if any) that the dividend is attributable to chargeable profits of the second company and, in such a case, the tax-free benefit shall be ascertained without regard to any part of the dividend that is not attributable to such profits.

(2) Subsections (3) to (11) below apply for the interpretation of subsection (1) above.

(3) Chargeable profits shall be ascertained as follows—

(a) the distributable profits of any company are chargeable profits of that company to the extent that they are profits arising on a transaction caught by this section, and

(b) where any company makes a distribution attributable wholly or partly to chargeable profits (including any profits that are chargeable profits by virtue of this paragraph) to another company, the distributable profits of the other company, so far as they represent that distribution or so much of it as was attributable to chargeable profits, are chargeable profits of the other company,

and for this purpose any loss or other amount to be set against the profits of a company in determining the distributable profits shall be set first against profits other than the profits so arising or, as the case may be, representing so much of the distribution as was attributable to chargeable profits.

(4) The distributable profits of a company are such profits computed on a commercial basis as, after allowing for any provision properly made for tax, the company is empowered, assuming sufficient funds, to distribute to persons entitled to participate in the profits of the company.

(5) Profits of a company ("company A") are profits arising on a transaction caught by this section where each of the following 3 conditions is satisfied.

(6) The first condition is that the transaction is—

(a) a disposal of an asset by company A to another company in circumstances such that company A and the other company are treated as mentioned in section 171(1), or

(b) an exchange, or a transaction treated for the purposes of section 135(2) and (3) as an exchange, of shares in or debentures of a company held by company A for shares in or debentures of another company, being a company associated with company A immediately after the transaction, and is treated by virtue of section 135(3) as a reorganisation of share capital, or

(c) a revaluation of an asset in the accounting records of company A.

In the following conditions the "asset with enhanced value" means (subject to section 33), in the paragraph (a) case, the asset acquired by the person to whom the disposal is made, in the paragraph (b) case, the shares in or debentures of the other company and, in the paragraph (c) case, the revalued asset.

(7) The second condition is that—

(a) during the period beginning with the transaction referred to in subsection (6) above and ending immediately before the section 30 disposal, there is no

disposal of the asset with enhanced value to any person, other than a disposal falling within section 171(1), and

(b) no disposal of the asset with enhanced value is treated as having occurred during that period by virtue of section 178 or 179.

(8) The third condition is that, immediately after the section 30 disposal, the asset with enhanced value is owned by a person other than the company making that disposal or a company associated with it.

(9) The conditions in subsections (6) to (8) above are not satisfied if—

(a) at the time of the transaction referred to in subsection (6) above, company A carries on a trade and a profit on a disposal of the asset with enhanced value would form part of the trading profits, or

(b) by reason of the nature of the asset with enhanced value, a disposal of it could give rise neither to a chargeable gain nor to an allowable loss, or

(c) immediately before the section 30 disposal, the company owning the asset with enhanced value carries on a trade and a profit on a disposal of the asset would form part of the trading profits.

(10) The amount of chargeable profits of a company to be attributed to any distribution made by the company at any time in respect of any class of shares, securities or rights shall be ascertained by—

(a) determining the total of distributable profits, and the total of chargeable profits, that remains after allowing for earlier distributions made in respect of that or any other class of shares, securities or rights, and for distributions made at or to be made after that time in respect of other classes of shares, securities or rights, and

(b) attributing first to that distribution distributable profits other than chargeable profits.

(11) The amount of chargeable profits of a company to be attributed to any part of a distribution made at any time to which a person is entitled by virtue of any part of his holding of any class of shares, securities or rights, shall be such proportion of the chargeable profits as are attributable under subsection (10) above to the distributions made at that time in respect of that class as corresponds to that part of his holding.

[F44 31A Asset-holding company leaving the group.

(1) This section applies where profits of a company would be profits arising on a transaction caught by section 31 but for the fact that the condition in section 31(8) is not satisfied.

(2) The profits shall be treated as profits arising on a transaction caught by section 31 if—

(a) subsection (4) or (5) below is satisfied, and

(b) subsection (6) below is satisfied.

(3) In the following provisions of this section—

"the asset-holding company" means, in relation to any particular time, the company which holds the asset with enhanced value at that time,

"the disposal group" means the group of companies of which the company which made the section 30 disposal was a member at the time of the disposal (or a group which, by virtue of section 170(10), is treated as the same as that group), and

"the six-year period" means the period of six years starting with the date of the section 30 disposal.

(4) This subsection is satisfied if at any time during the six-year period an event occurs which consists in the asset-holding company ceasing to be a member of the disposal group otherwise than by reason of the fact that the principal company of that group becomes a member of another group.

(5) This subsection is satisfied if—

(a) at any time during the six-year period the asset-holding company ceases to be a member of the disposal group by reason only of the fact that the principal company of that group becomes a member of another group, and

(b) at any time during that period an event occurs as a result of which there is no member of the disposal group of which the asset-holding company is a 75 per cent. subsidiary or there is no member of that group of which the asset-holding company is an effective 51 per cent. subsidiary.

(6) This subsection is satisfied if no disposal of the asset with enhanced value is treated as having occurred by virtue of section 179 during the period—

(a) beginning with the time of the section 30 disposal, and

(b) ending immediately before the event referred to in subsection (4) or (5)(b) above.

(7) Where section 30 has effect by virtue of this section in relation to a disposal—

(a) a chargeable gain of the differential amount shall be treated as accruing to the chargeable company immediately before the event referred to in subsection (4) or (5)(b) above, and

(b) subsection (5) of section 30 shall not apply.

(8) The "differential amount" is A minus B where—

(a) A is the amount of the allowable loss or chargeable gain which would have accrued on the section 30 disposal if the consideration for the disposal had been increased in accordance with section 30(5),

(b) B is the amount of the allowable loss or chargeable gain which accrued on the section 30 disposal,

(c) an allowable loss is treated as a negative amount, and

(d) a negative result is treated as a result of nil.

(9) The "chargeable company" is—

(a) the company which made the section 30 disposal, or

(b) if that company is no longer a member of the disposal group immediately before the event referred to in subsection (4) or (5)(b) above, the principal company of that group.

(10) A gain which is treated as accruing by virtue of subsection (7) above shall, for the purposes of section 18(3), be treated as a gain accruing on a disposal between the parties to the section 30 disposal made at a time when they are connected persons.**]**

Textual Amendments

F44 S. 31A inserted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 2**

32 Disposals within a group followed by a disposal of shares.

(1) The references in section 30 to a reduction in the value of an asset, in the case mentioned in subsection (8) of that section, do not include a reduction attributable to the disposal of any asset ("the underlying asset") by the second company at a time when it and the first company are associated, being a disposal falling within section 171(1), except in a case within subsection (2) below.

(2) A case is within this subsection if the amount or value of the actual consideration for the disposal of the underlying asset—

(a) is less than the market value of the underlying asset, and

(b) is less than the cost of the underlying asset,

unless the disposal is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax.

(3) For the purposes of subsection (2) above, the cost of an asset owned by a company is the aggregate of—

(a) any capital expenditure incurred by the company in acquiring or providing the asset, and

(b) any other capital expenditure incurred by the company in respect of the asset while owned by that company.

(4) For the purposes of this section, where the disposal of the underlying asset is a part disposal, the reference in subsection (2)(a) above to the market value of the underlying asset is to the market value of the asset acquired by the person to whom the disposal is made and the amounts to be attributed to the underlying asset under paragraphs (a) and (b) of subsection (3) above shall be reduced to the appropriate proportion of those amounts, that is—

(a) the proportion of capital expenditure in respect of the underlying asset properly attributed in the accounting records of the company to the asset acquired by the person to whom the disposal is made, or

(b) where paragraph (a) above does not apply, such proportion as **[**F45is**]** just and reasonable.

(5) Where by virtue of a distribution in the course of dissolving or winding up the second company the first company is treated as disposing of an interest in the principal asset, the exception mentioned in subsection (1) above does not apply.

Textual Amendments

F45 Word in s. 32(4)(b) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 47(b)**

33 Provisions supplementary to sections 30 to 32.

(1) For the purposes of sections 30(2) and 31(7) to (9), subsections (2) to (6) below apply for the purpose of determining in the case of any asset ("the original asset") whether it is subsequently disposed of or treated as disposed of or owned or any other condition is satisfied in respect of it.

[F46(1A) For the purposes of section 31A, subsections (2) to (6) below apply for the purpose of determining any question in relation to the asset with enhanced value.**]**

(2) References in sections 30(2)(a) and (b)**[**[F47], 31(7) and 31A(6)**]** to a disposal are to a disposal other than a part disposal.

(3) **[**[F48]For the purposes of sections 30(2) and 31(7) to (9),**]** references to an asset are to the original asset or, where at a later time one or more assets are treated by virtue of subsections (5) or (6) below as the same as the original asset—

(a) if no disposal falling within paragraph (a) or (b) of section 30(2) or, as the case may be, of 31(7) has occurred, those references are to the asset so treated or, as the case may be, all the assets so treated, and

(b) in any other case, those references are to an asset or, as the case may be, all the assets representing that part of the value of the original asset that remains after allowing for earlier disposals falling within the paragraphs concerned,

references in this subsection to a disposal including a disposal which would fall within the paragraphs concerned but for subsection (2) above.

[[F49](3A) Subsections (3B) and (3C) below apply (instead of subsection (3) above) for the purposes of section 31A where one or more assets are treated by virtue of subsection (5) or (6) below as the same as the asset with enhanced value.

(3B) If in the period beginning with the time of the transaction referred to in section 31(6) and ending immediately before the event referred to in section 31A(4) or (5)(b)—

(a) there is no disposal of the asset with enhanced value to any person other than a disposal falling with section 171(1), and

(b) no disposal of the asset with enhanced value is treated as having occurred by virtue of section 179,

then references to the asset with enhanced value are to the asset which is treated by virtue of subsection (5) or (6) below as the same as that asset or, as the case may be, all the assets so treated.

(3C) In any other case, references to the asset with enhanced value are to an asset or, as the case may be, all the assets representing that part of the value of the asset with enhanced value that remains after allowing for disposals of a kind mentioned in subsection (3B) (a) or (b).**]**

(4) **[**[F50]Where by virtue of subsection (3), (3B) or (3C) above references to an asset are taken as references to two or more assets**]**—

(a) those assets shall be treated as if they were a single asset,

(b) any disposal of any one of them is to be treated as a part disposal, and

(c) the reference in section 30(2) to the asset owned at the time of the disposal by a company associated with the disposing company and **[**[F51]a reference in section 31(8) or 31A(3)**]** to the asset with enhanced value is to all or any of those assets.

(5) Where there is a part disposal of an asset, that asset and the asset acquired by the person to whom the disposal is made are to be treated as the same.

(6) Where the value of an asset is derived from any other asset in the ownership of the same or an associated company, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the first asset is to be treated as the same as the second.

(7) For the purposes of section 30(2), where account is to be taken under that subsection of a reduction in the value of a relevant asset and at the time of the disposal by the disposing company referred to in that subsection—

(a) references to the relevant asset are by virtue of this section references to 2 or more assets treated as a single asset, and

(b) one or more but not all of those assets are owned by a company associated with the disposing company,

the amount of the reduction in the value of the relevant asset to be taken into account by virtue of that subsection shall be reduced to such amount as **[**F52is**]** just and reasonable.

(8) For the purposes of section 31, where—

(a) a dividend paid by the second company is attributable to chargeable profits of that company, and

(b) the condition in subsection (7), (8) or (9)(c) of that section is satisfied by reference to an asset, or assets treated as a single asset, treated by virtue of subsection (3)(b) above as the same as the asset with enhanced value,

the amount of the reduction in value of the principal asset shall be reduced to such amount as **[**F53is**]** just and reasonable.

[F54(8A) In a case where—

(a) profits are treated as profits arising on a transaction caught by section 31 by virtue of section 31A, and

(b) the condition in section 31(7) or a condition in section 31A is satisfied by reference to an asset, or assets treated as a single asset, treated by virtue of subsection (3C) above as the same as the asset with enhanced value,

the amount of the reduction in value of the principal asset shall be reduced to such amount as is just and reasonable.**]**

(9) For the purposes of sections 30 to 32 and this section, companies are associated if they are members of the same group.

(10) Section 170(2) to (11) applies for the purposes of sections 30 to 32 and this section as it applies for the purposes of that section.

Textual Amendments

F46 S. 33(1A) inserted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(2)**

F47 Words in s. 33(2) substituted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(3)**

F48 Words in s. 33(3) inserted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(4)**

F49 S. 33(3A)-(3C) inserted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(5)**

F50 Words in s. 33(4) substituted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(6)(a)**

F51 Words in s. 33(4)(c) substituted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(6)(b)**

F52 Word in s. 33(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 47(c)**

F53 Word in s. 33(8) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 47(c)**

F54 S. 33(8A) inserted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 3(7)**

34 Transactions treated as a reorganisation of share capital.

(1) Where—

(a) but for sections 127 and 135(3), section 30 would have effect as respects the disposal by a company ("the disposing company") of an asset consisting of shares in or debentures of another company ("the original holding") in exchange for shares in or debentures of a further company which, immediately after the disposal, is not a member of the same group as the disposing company, and

(b) if section 30 had effect as respects that disposal, any allowable loss or chargeable gain accruing on the disposal would be calculated as if the consideration for the disposal were increased by an amount,

the disposing company shall be treated for the purposes of section 128(3) as receiving, on the reorganisation of share capital that is treated as occurring by virtue of section 135(3), that amount for the disposal of the original holding.

[F55(1A) Subsection (1B) below applies where, but for sections 127 and 135(3), section 30 would have effect, by virtue of section 31A, as respects the disposal by a company ("the disposing company") of an asset consisting of shares in or debentures of another company ("the original holding") in exchange for shares in or debentures of a further company which, immediately after the disposal, is not a member of the same group as the disposing company.

(1B) Section 31A shall apply as if sections 127 and 135(3) did not apply.

(1C) In applying section 31A(7) and (8)—

(a) the reference in section 31A(8) to an allowable loss or chargeable gain which accrued on the section 30 disposal shall be taken as a reference to the allowable loss or chargeable gain which would have accrued had sections 127 and 135(3) not applied, and

(b) an allowable loss shall be treated as a chargeable gain of nil.**]**

(2) For the purposes of **[**F56subsections (1) to (1C) above**]** it shall be assumed that section 136 has effect generally for the purposes of this Act, and in **[**F57those subsections**]** "group" has the same meaning as in sections 30 to 33.

Textual Amendments

F55 S. 34(1A)-(1C) inserted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 4(2)**

F56 Words in s. 34(2) substituted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 4(3)(a)**

F57 Words in s. 34(2) substituted (with effect in accordance with Sch. 9 para. 5 of the amending Act) by Finance Act 1999 (c. 16), **Sch. 9 para. 4(3)(b)**

CHAPTER III

COMPUTATION OF GAINS: GENERAL PROVISIONS

Re-basing to 1982, and assets held on 6th April 1965

35 Assets held on 31st March 1982 (including assets held on 6th April 1965).

(1) This section applies to a disposal of an asset which was held on 31st March 1982 by the person making the disposal.

(2) Subject to the following provisions of this section, in computing for the purpose of this Act the gain or loss accruing on the disposal it shall be assumed that the asset was on 31st March 1982 sold by the person making the disposal, and immediately reacquired by him, at its market value on that date.

(3) Subject to subsection (5) below, subsection (2) above shall not apply to a disposal—

(a) where a gain would accrue on the disposal to the person making the disposal if that subsection did apply, and either a smaller gain or a loss would so accrue if it did not,

(b) where a loss would so accrue if that subsection did apply, and either a smaller loss or a gain would accrue if it did not,

(c) where, either on the facts of the case or by virtue of Schedule 2, neither a gain nor a loss would accrue if that subsection did not apply, or

(d) where neither a gain nor a loss would accrue by virtue of any of—

(i) sections 58, 73, 139, **[**F58140A,**]** 171, 172, 215, 216, **[**F59217A,**]** 218 to 221, 257(3), 258(4), 264 and 267(2) of this Act;

(ii) section 148 of the 1979 Act;

(iii) section 148 of the M5Finance Act 1982;

(iv) paragraph 2 of Schedule 2 to the M6Trustee Savings Banks Act 1985;

(v) section 130(3) of the M7Transport Act 1985;

(vi) section 486(8) of the Taxes Act; F60. . .

(vii) paragraph 2(1) of Schedule 12 to the M8Finance Act 1990 F61**[**F62...

(viii) paragraph 5(3) of Schedule 17 to the Finance (No. 2) Act 1992**]**

[F63(ix) paragraphs 2(1), 7(2), 11(3) and (4) and 25(2) of Schedule 24 to the Finance Act 1994;**]**

[F64(x) paragraph 4(2) of Schedule 25 to the Finance Act 1994;**]**

[F65(xi) paragraph 2(1) of Schedule 4 to the Coal Industry Act 1994;**]**

[F66(xii) paragraph 2(1) of Schedule 7 to the Broadcasting Act 1996;**]**

(4) Where in the case of a disposal of an asset—

(a) the effect of subsection (2) above would be to substitute a loss for a gain or a gain for a loss, but

(b) the application of subsection (2) is excluded by subsection (3),

it shall be assumed in relation to the disposal that the asset was acquired by the person making the disposal for a consideration such that, on the disposal, neither a gain nor a loss accrues to him.

(5) If a person so elects, disposals made by him (including any made by him before the election) shall fall outside subsection (3) above (so that subsection (2) above is not excluded by that subsection).

(6) An election by a person under subsection (5) above shall be irrevocable and shall be made by notice to **[**F67an officer of the Board**]** at any time before 6th April 1990 or at any time during the period beginning with the day of the first relevant disposal and ending—

[F68(a) in the case of an election for the purposes of capital gains tax, with the first anniversary of the 31st January next following the year of assessment in which the disposal is made;

(aa) in the case of an election for the purposes of corporation tax, 2 years after the end of the accounting period in which the disposal is made; or

(b) in either case, at such later time as the Board may allow;**]**

and "the first relevant disposal" means the first disposal to which this section applies which is made by the person making the election.

(7) An election made by a person under subsection (5) above in one capacity does not cover disposals made by him in another capacity.

(8) All such adjustments shall be made, whether by way of discharge or repayment of tax, the making of assessments or otherwise, as are required to give effect to an election under subsection (5) above.

(9) Schedule 2 shall have effect in relation to disposals of assets owned on 6th April 1965 in cases where neither subsection (2) nor subsection (4) above applies.

(10) Schedule 3, which contains provisions supplementary to subsections (1) to (8) above, shall have effect.

Textual Amendments

F58 Words in s. 35(3)(d)(i) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(2)**

F59 Words in s. 35 (3)(d)(i) inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(2)**; S.I. 1993/236, **art.2**

F60 Words in s. 35(3)(d)(vi) repealed (*retrosp.*) by 1992 c. 48, ss. 77, 82, Sch. 17 paras. 5(9), 7, **Sch. 18 Pt. X**

F61 Word in s. 35(3)(d)(vii) repealed (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 2(2), **Sch. 26 Pt. VIII(2)**

F62 Words in s. 35(3)(d) inserted (*retrosp.*) by 1992 c. 48, s. 77, Sch. 17 paras. 5(9), **7**

F63 S. 35(3)(d)(ix) inserted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 2(2)**

F64 S. 35(3)(d)(x) inserted (with effect as specified in Sch. 25 para. 4(1) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 25 para. 4(3)**

F65 S. 35(3)(d)(xi) inserted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 2(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

F66 S. 35(3)(d)(xii) inserted (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 3** (with Sch. 7 para. 9(1))

F67 Words in s. 35(6) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 35(a)**

F68 S. 35(6)(a)(aa)(b) substituted for s. 35(6)(a)(b) (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 35(b)**

Marginal Citations

M5 1982 c. 39.
M6 1985 c. 50.
M7 1985 c. 67.
M8 1990 c. 29.

36 Deferred charges on gains before 31st March 1982.

Schedule 4, which provides for the reduction of a deferred charge to tax where the charge is wholly or partly attributable to an increase in the value of an asset before 31st March 1982, shall have effect.

Allowable deductions

37 Consideration chargeable to tax on income.

(1) There shall be excluded from the consideration for a disposal of assets taken into account in the computation of the gain any money or money's worth charged to income tax as income of, or taken into account as a receipt in computing income or profits or gains or losses of, the person making the disposal for the purposes of the Income Tax Acts.

(2) Subsection (1) above shall not be taken as excluding from the consideration so taken into account any money or money's worth which is—

(a) taken into account in the making of a balancing charge under the 1990 Act, including the provisions of the Taxes Act which are to be treated as contained in the 1990 Act but excluding Part III of the 1990 Act, or

(b) brought into account as the disposal value of machinery or plant under section 24 of the 1990 Act.

(3) This section shall not preclude the taking into account in a computation of the gain, as consideration for the disposal of an asset, of the capitalised value of a rentcharge (as in a case where a rentcharge is exchanged for some other asset) or of the capitalised value of a ground annual or feu duty, or of a right of any other description to income or to payments in the nature of income over a period, or to a series of payments in the nature of income.

(4) The reference in subsection (1) above to computing income or profits or gains or losses shall not be taken as applying to a computation of a company's income for the purposes of subsection (2) of section 76 of the Taxes Act (expenses of management of insurance companies).

Modifications etc. (not altering text)

C49 S. 37 extended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by 1993 c. 34, **ss. 176(2)(b)**, 184(3)
C50 S. 37 excluded (19.3.1997) by Finance Act 1997 (c. 16), Sch. 12 para. 12(1)(2)(3)(4), 13, **14** (with Sch. 12 para. 17)
C51 S. 37(1) restricted (16.7.1992, with effect as mentioned in s. 65(6) of the amending Act) by 1992 c. 48, **s. 65(2)(e)(5)**

38 Acquisition and disposal costs etc.

(1) Except as otherwise expressly provided, the sums allowable as a deduction from the consideration in the computation of the gain accruing to a person on the disposal of an asset shall be restricted to—

(a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the asset, together with the incidental costs to him of the acquisition or, if the asset was not acquired by him, any expenditure wholly and exclusively incurred by him in providing the asset,

(b) the amount of any expenditure wholly and exclusively incurred on the asset by him or on his behalf for the purpose of enhancing the value of the asset, being expenditure reflected in the state or nature of the asset at the time of the disposal, and any expenditure wholly and exclusively incurred by him in establishing, preserving or defending his title to, or to a right over, the asset,

(c) the incidental costs to him of making the disposal.

(2) For the purposes of this section and for the purposes of all other provisions of this Act, the incidental costs to the person making the disposal of the acquisition of the asset or of its disposal shall consist of expenditure wholly and exclusively incurred by him for the purposes of the acquisition or, as the case may be, the disposal, being fees, commission or remuneration paid for the professional services of any surveyor or valuer, or auctioneer, or accountant, or agent or legal adviser and costs of transfer or conveyance (including stamp duty) together—

(a) in the case of the acquisition of an asset, with costs of advertising to find a seller, and

(b) in the case of a disposal, with costs of advertising to find a buyer and costs reasonably incurred in making any valuation or apportionment required for the purposes of the computation of the gain, including in particular expenses reasonably incurred in ascertaining market value where required by this Act.

(3) Except as provided by section 40, no payment of interest shall be allowable under this section.

(4) Any provision in this Act introducing the assumption that assets are sold and immediately reacquired shall not imply that any expenditure is incurred as incidental to the sale or reacquisition.

Modifications etc. (not altering text)
C52 S. 38 restricted (3.5.1994) by Finance Act 1994 (c. 9), **s. 173(4)(d)** (with s. 173(1))

39 Exclusion of expenditure by reference to tax on income.

(1) There shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure allowable as a deduction in computing the **[**[F69]profits**]** or losses of a trade, profession or vocation for the purposes of income tax or allowable as a deduction in computing any other income or profits or gains or losses for the purposes of the Income Tax Acts and any expenditure which, although not so allowable as a deduction in computing any losses, would be so allowable but for an insufficiency of income or profits or gains; and this subsection applies irrespective

of whether effect is or would be given to the deduction in computing the amount of tax chargeable or by discharge or repayment of tax or in any other way.

(2) Without prejudice to the provisions of subsection (1) above, there shall be excluded from the sums allowable under section 38 as a deduction in the computation of the gain any expenditure which, if the assets, or all the assets to which the computation relates, were, and had at all times been, held or used as part of the fixed capital of a trade the **[**F69profits**]** of which were (irrespective of whether the person making the disposal is a company or not) chargeable to income tax would be allowable as a deduction in computing the **[**F69profits**]** or losses of the trade for the purposes of income tax.

(3) No account shall be taken of any relief under Chapter II of Part IV of the M9Finance Act 1981 or under Schedule 5 to the M10Finance Act 1983, in so far as it is not withdrawn and relates to shares issued before 19th March 1986, in determining whether any sums are excluded by virtue of subsection (1) or (2) above from the sums allowable as a deduction in the computation of gains or losses for the purposes of this Act.

Textual Amendments

F69 Word in s. 39(1)(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 7**

Modifications etc. (not altering text)

C53 S. 39 extended (27.7.1993 with effect for the years 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by 1993 c. 34, **s. 176(2)(b)**, 184(3)

Marginal Citations

M9 1981 c. 35.
M10 1983 c. 28.

40 Interest charged to capital.

(1) Where—

(a) a company incurs expenditure on the construction of any building, structure or works, being expenditure allowable as a deduction under section 38 in computing a gain accruing to the company on the disposal of the building, structure or work, or of any asset comprising it, and

(b) that expenditure was defrayed out of borrowed money,

the sums so allowable under section 38 shall, subject to subsection (2) below, include the amount of any interest on that borrowed money which is referable to a period or part of a period ending on or before the disposal.

(2) Subsection (1) above has effect subject to section 39 and does not apply to interest which is a charge on income.

(3) In relation to interest paid in any accounting period ending before 1st April 1981 subsection (1) above shall have effect with the substitution for all following paragraph (b) of—

"and

(c) the company charged to capital all or any of the interest on that borrowed money referable to a period or part of a period ending on or before the disposal,

and the sums so allowable under section 38 shall include the amount of that interest charged to capital. ";

and subsection (2) above shall not apply.

41 Restriction of losses by reference to capital allowances and renewals allowances.

(1) Section 39 shall not require the exclusion from the sums allowable as a deduction in the computation of the gain of any expenditure as being expenditure in respect of which a capital allowance or renewals allowance is made, but the amount of any losses accruing on the disposal of an asset shall be restricted by reference to capital allowances and renewals allowances as follows.

(2) In the computation of the amount of a loss accruing to the person making the disposal, there shall be excluded from the sums allowable as a deduction any expenditure to the extent to which any capital allowance or renewals allowance has been or may be made in respect of it.

(3) If the person making the disposal acquired the asset—

(a) by a transfer by way of sale in relation to which an election under section 158 of the 1990 Act was made, or

(b) by a transfer to which section 78(2) of that Act applies,

(being enactments under which a transfer is treated for the purposes of capital allowances as being made at written down value), the preceding provisions of this section shall apply as if any capital allowance made to the transferor in respect of the asset had (except so far as any loss to the transferor was restricted under those provisions) been made to the person making the disposal (that is the transferee); and where the transferor acquired the asset by such a transfer, capital allowances which by virtue of this subsection can be taken into account in relation to the transferor shall also be taken into account in relation to the transferee (that is the person making the disposal), and so on for any series of transfers before the disposal.

(4) In this section "capital allowance" means—

(a) any allowance under the 1990 Act, including the provisions of the Taxes Act which are to be treated as contained in the 1990 Act, other than an allowance under section 33(1) of the Taxes Act (relief for cost of maintenance of agricultural land),

(b) any relief given under section 30 of the Taxes Act (expenditure on sea walls), and

(c) any deduction in computing **[**[F70]profits**]** allowable under section 91 of the Taxes Act (cemeteries).

(5) In this section "renewals allowance" means a deduction allowable in computing the **[**[F70]profits**]** of a trade, profession or vocation for the purpose of income tax by reference to the cost of acquiring an asset for the purposes of the trade, profession or vocation in replacement of another asset, and for the purposes of this Chapter a renewals allowance shall be regarded as a deduction allowable in respect of the expenditure incurred on the asset which is being replaced.

(6) The amount of capital allowances to be taken into account under this section in relation to a disposal include any allowances falling to be made by reference to the event which is the disposal, and there shall be deducted from the amount of the allowances the

amount of any balancing charge to which effect has been or is to be given by reference to the event which is the disposal, or any earlier event.

(7) Where the disposal is of machinery or plant in relation to expenditure on which allowances or charges have been made under Part II of the 1990 Act, and neither section 79 (assets used only partly for trade purposes) nor section 80 (wear and tear subsidies) of that Act applies, the capital allowances to be taken into account under this section are to be regarded as equal to the difference between the capital expenditure incurred, or treated as incurred, under that Part on the provision of the machinery or plant by the person making the disposal and the disposal value required to be brought into account in respect of the machinery or plant.

Textual Amendments

F70 Word in s. 41(4)(5) substituted (31.7.1998) by Finance Act 1998 (c. 36), s. 46(3)(a), **Sch. 7 para. 7**

Modifications etc. (not altering text)

C54 S. 41 modified (16.7.1992)) by 1992 c. 48, s. 77, **Sch. 17 paras. 6(2)(5)**,7

C55 S. 41 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 21(2)(5)**(6)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

42 Part disposals.

(1) Where a person disposes of an interest or right in or over an asset, and generally wherever on the disposal of an asset any description of property derived from that asset remains undisposed of, the sums which under paragraphs (a) and (b) of section 38(1) are attributable to the asset shall, both for the purposes of the computation of the gain accruing on the disposal and for the purpose of applying this Part in relation to the property which remains undisposed of, be apportioned.

(2) The apportionment shall be made by reference—

(a) to the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

(b) to the market value of the property which remains undisposed of on the other hand (call that market value B),

and accordingly the fraction of the said sums allowable as a deduction in the computation of the gain accruing on the disposal shall be—

$$\frac{A}{A+B}$$

and the remainder shall be attributed to the property which remains undisposed of.

(3) Any apportionment to be made in pursuance of this section shall be made before operating the provisions of section 41 and if, after a part disposal, there is a subsequent disposal of an asset the capital allowances or renewals allowances to be taken into account in pursuance of that section in relation to the subsequent disposal shall, subject to subsection (4) below, be those referable to the sums which under paragraphs (a) and (b) of section 38(1) are attributable to the asset whether before or after the part disposal, but those allowances shall be reduced by the amount (if any) by which the loss on the earlier disposal was restricted under the provisions of section 41.

(4) This section shall not be taken as requiring the apportionment of any expenditure which, on the facts, is wholly attributable to what is disposed of, or wholly attributable to what remains undisposed of.

(5) It is hereby declared that this section, and all other provisions for apportioning on a part disposal expenditure which is deductible in computing a gain, are to be operated before the operation of, and without regard to, section 58(1), sections 152 to 158 (but without prejudice to section 152(10)), section 171(1) or any other enactment making an adjustment to secure that neither a gain nor a loss occurs on a disposal.

43 Assets derived from other assets.

If and so far as, in a case where assets have been merged or divided or have changed their nature or rights or interests in or over assets have been created or extinguished, the value of an asset is derived from any other asset in the same ownership, an appropriate proportion of the sums allowable as a deduction in the computation of a gain in respect of the other asset under paragraphs (a) and (b) of section 38(1) shall, both for the purpose of the computation of a gain accruing on the disposal of the first-mentioned asset and, if the other asset remains in existence, on a disposal of that other asset, be attributed to the first-mentioned asset.

Wasting assets

44 Meaning of “wasting asset".

(1) In this Chapter “wasting asset” means an asset with a predictable life not exceeding 50 years but so that—

(a) freehold land shall not be a wasting asset whatever its nature, and whatever the nature of the buildings or works on it;

(b) “life”, in relation to any tangible movable property, means useful life, having regard to the purpose for which the tangible assets were acquired or provided by the person making the disposal;

(c) plant and machinery shall in every case be regarded as having a predictable life of less than 50 years, and in estimating that life it shall be assumed that its life will end when it is finally put out of use as being unfit for further use, and that it is going to be used in the normal manner and to the normal extent and is going to be so used throughout its life as so estimated;

(d) a life interest in settled property shall not be a wasting asset until the predictable expectation of life of the life tenant is 50 years or less, and the predictable life of life interests in settled property and of annuities shall be ascertained from actuarial tables approved by the Board.

(2) In this Chapter “the residual or scrap value”, in relation to a wasting asset, means the predictable value, if any, which the wasting asset will have at the end of its predictable life as estimated in accordance with this section.

(3) The question what is the predictable life of an asset, and the question what is its predictable residual or scrap value at the end of that life, if any, shall, so far as those questions are not immediately answered by the nature of the asset, be taken, in relation to any disposal of the asset, as they were known or ascertainable at the time when the asset was acquired or provided by the person making the disposal.

45 Exemption for certain wasting assets.

(1) Subject to the provisions of this section, no chargeable gain shall accrue on the disposal of, or of an interest in, an asset which is tangible movable property and which is a wasting asset.

(2) Subsection (1) above shall not apply to a disposal of, or of an interest in, an asset—

(a) if, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, the asset has been used and used solely for the purposes of a trade, profession or vocation and if that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset or interest under paragraph (a) or paragraph (b) of section 38(1); or

(b) if the person making the disposal has incurred any expenditure on the asset or interest which has otherwise qualified in full for any capital allowance.

(3) In the case of the disposal of, or of an interest in, an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—

(a) the consideration for the disposal, and any expenditure attributable to the asset or interest by virtue of section 38(1)(a) and (b), shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and

(b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and

(c) subsection (1) above shall not apply to any gain accruing by reference to the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances.

(4) Subsection (1) above shall not apply to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market.

46 Straightline restriction of allowable expenditure.

(1) In the computation of the gain accruing on the disposal of a wasting asset it shall be assumed—

(a) that any expenditure attributable to the asset under section 38(1)(a) after deducting the residual or scrap value, if any, of the asset, is written off at a uniform rate from its full amount at the time when the asset is acquired or provided to nothing at the end of its life, and

(b) that any expenditure attributable to the asset under section 38(1)(b) is written off from the full amount of that expenditure at the time when that expenditure is first reflected in the state or nature of the asset to nothing at the end of its life,

so that an equal daily amount is written off day by day.

(2) Thus, calling the predictable life of a wasting asset at the time when it was acquired or provided by the person making the disposal L, the period from that time to the time of disposal T(1), and, in relation to any expenditure attributable to the asset under section 38(1)(b), the period from the time when that expenditure is first reflected in

the state or nature of the asset to the said time of disposal T(2), there shall be excluded from the computation of the gain—

(a) out of the expenditure attributable to the asset under section 38(1)(a) a fraction—

$$\frac{T(1)}{L}$$

of an amount equal to the amount of that expenditure minus the residual or scrap value, if any, of the asset, and

(b) out of the expenditure attributable to the asset under section 38(1)(b) a fraction—

$$\frac{T(2)}{L—(T(1)-T(2))}$$

of the amount of the expenditure.

(3) If any expenditure attributable to the asset under section 38(1)(b) creates or increases a residual or scrap value of the asset, the provisions of subsection (1)(a) above shall be applied so as to take that into account.

47 Wasting assets qualifying for capital allowances.

(1) Section 46 shall not apply in relation to a disposal of an asset—

(a) which, from the beginning of the period of ownership of the person making the disposal to the time when the disposal is made, is used and used solely for the purposes of a trade, profession or vocation and in respect of which that person has claimed or could have claimed any capital allowance in respect of any expenditure attributable to the asset under paragraph (a) or paragraph (b) of section 38(1), or

(b) on which the person making the disposal has incurred any expenditure which has otherwise qualified in full for any capital allowance.

(2) In the case of the disposal of an asset which, in the period of ownership of the person making the disposal, has been used partly for the purposes of a trade, profession or vocation and partly for other purposes, or has been used for the purposes of a trade, profession or vocation for part of that period, or which has otherwise qualified in part only for capital allowances—

(a) the consideration for the disposal, and any expenditure attributable to the asset by paragraph (a) or paragraph (b) of section 38(1) shall be apportioned by reference to the extent to which that expenditure qualified for capital allowances, and

(b) the computation of the gain shall be made separately in relation to the apportioned parts of the expenditure and consideration, and

(c) section 46 shall not apply for the purposes of the computation in relation to the part of the consideration apportioned to use for the purposes of the trade, profession or vocation, or to the expenditure qualifying for capital allowances, and

(d) if an apportionment of the consideration for the disposal has been made for the purposes of making any capital allowance to the person making the disposal or for the purpose of making any balancing charge on him, that apportionment shall be employed for the purposes of this section, and

(e) subject to paragraph (d) above, the consideration for the disposal shall be apportioned for the purposes of this section in the same proportions as the expenditure attributable to the asset is apportioned under paragraph (a) above.

Miscellaneous provisions

48 Consideration due after time of disposal.

In the computation of the gain consideration for the disposal shall be brought into account without any discount for postponement of the right to receive any part of it and, in the first instance, without regard to a risk of any part of the consideration being irrecoverable or to the right to receive any part of the consideration being contingent; and if any part of the consideration so brought into account **[**F71subsequently proves to be irrecoverable, there shall be made, on a claim being made to that effect, such adjustment, whether by way of discharge or repayment of tax or otherwise, as is required in consequence**]**.

Textual Amendments

F71 Words in s. 48 substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 48**

49 Contingent liabilities.

(1) In the first instance no allowance shall be made in the computation of the gain—

(a) in the case of a disposal by way of assigning a lease of land or other property, for any liability remaining with, or assumed by, the person making the disposal by way of assigning the lease which is contingent on a default in respect of liabilities thereby or subsequently assumed by the assignee under the terms and conditions of the lease,

(b) for any contingent liability of the person making the disposal in respect of any covenant for quiet enjoyment or other obligation assumed as vendor of land, or of any estate or interest in land, or as a lessor,

(c) for any contingent liability in respect of a warranty or representation made on a disposal by way of sale or lease of any property other than land.

[F72(2) If any such contingent liability subsequently becomes enforceable and is being or has been enforced, there shall be made, on a claim being made to that effect, such adjustment, whether by way of discharge or repayment of tax or otherwise, as is required in consequence.**]**

(3) Subsection (2) above also applies where the disposal in question was before the commencement of this section.

Textual Amendments

F72 S. 49(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 49**

50 Expenditure reimbursed out of public money.

There shall be excluded from the computation of a gain any expenditure which has been or is to be met directly or indirectly by the Crown or by any Government, public or local authority whether in the United Kingdom or elsewhere.

51 Exemption for winnings and damages etc.

(1) It is hereby declared that winnings from betting, including pool betting, or lotteries or games with prizes are not chargeable gains, and no chargeable gain or allowable loss shall accrue on the disposal of rights to winnings obtained by participating in any pool betting or lottery or game with prizes.

(2) It is hereby declared that sums obtained by way of compensation or damages for any wrong or injury suffered by an individual in his person or in his profession or vocation are not chargeable gains.

52 Supplemental.

(1) No deduction shall be allowable in a computation of the gain more than once from any sum or from more than one sum.

(2) References in this Chapter to sums taken into account as receipts or as expenditure in computing profits or gains or losses for the purposes of income tax shall include references to sums which would be so taken into account but for the fact that any profits or gains of a trade, profession, employment or vocation are not chargeable to income tax or that losses are not allowable for those purposes.

(3) In this Chapter references to income or profits charged or chargeable to tax include references to income or profits taxed or as the case may be taxable by deduction at source.

(4) For the purposes of any computation of the gain any necessary apportionments shall be made of any consideration or of any expenditure and the method of apportionment adopted shall, subject to the express provisions of this Chapter, be [F73]... just and reasonable.

(5) In this Chapter "capital allowance" and "renewals allowance" have the meanings given by subsections (4) and (5) of section 41.

Textual Amendments

F73 Words in s. 52(4) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 50, **Sch. 41 Pt. V(10)**

CHAPTER IV

COMPUTATION OF GAINS: THE INDEXATION ALLOWANCE

General

53 The indexation allowance and interpretative provisions.

(1) Subject to any provision to the contrary, **[**F74if on the disposal of an asset there is an unindexed gain, an allowance ("the indexation allowance") shall be allowed against the unindexed gain—

(a) so as to give the gain for the purposes of this Act, or

(b) if the indexation allowance equals or exceeds the unindexed gain, so as to extinguish it (in which case the disposal shall be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues)**]**;

and any reference in this Act to an indexation allowance or to the making of an indexation allowance shall be construed accordingly.

[F75(1A) Indexation allowance in respect of changes shown by the retail prices indices for months after April 1998 shall be allowed only for the purposes of corporation tax.**]**

(2) For the purposes of **[**F76this Chapter**]**, in relation to any disposal of an asset—

[F77(a) "unindexed gain" means the amount of the gain on the disposal computed in accordance with this Part**]**; and

(b) "relevant allowable expenditure" means, subject to subsection (3) below, any sum which, in the computation of the unindexed **[**F78gain**]** was taken into account by virtue of paragraph (a) or paragraph (b) of section 38(1).

[F79(2A) Notwithstanding anything in section 16 of this Act, this section shall not apply to a disposal on which a loss accrues.**]**

(3) In determining what sum (if any) was taken into account as mentioned in subsection (2)(b) above, account shall be taken of any provision of any enactment which, for the purpose of the computation of the gain, increases, excludes or reduces the whole or any part of any item of expenditure falling within section 38 or provides for it to be written-down.

(4) Sections 54 and 108 and this section have effect subject to sections 56, 57, 109, 110**[**F80, 110A**]**, 113, 131 and 145.

Textual Amendments

F74 Words in s. 53(1) substituted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(1)** (with Sch. 12)

F75 S. 53(1A) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 122(1)**

F76 Words in s. 53(2) substituted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(2)(a)** (with Sch. 12)

F77 S. 53(2)(a) substituted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(2)(b)** (with Sch. 12)

F78 Word in s. 53(2)(b) substituted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(2)(c)** (with Sch. 12)

F79 S. 53(2A) inserted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(3)** (with Sch. 12)

F80 Word in s. 53(4) inserted (with effect in accordance with s. 125(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 125(3)**

54 Calculation of indexation allowance.

(1) Subject to any provision to the contrary, the indexation allowance is the aggregate of the indexed rise in each item of relevant allowable expenditure; and, in relation to any such item of expenditure, the indexed rise is a sum produced by multiplying the amount of that item by a figure expressed as a decimal and determined, subject to subsections (2) and (3) below, by the formula—

$$\frac{(RD - RI)}{RI}$$

where—

RD is the retail prices index for **[**F81the relevant month**]**; and

RI is the retail prices index for March 1982 or the month in which the expenditure was incurred, whichever is the later.

[F82(1A) In subsection (1) above—

(a) the references to an item of relevant allowable expenditure shall not, except for the purposes of corporation tax, include any item of expenditure incurred on or after 1st April 1998; and

(b) the reference to the relevant month is a reference—

(i) where that subsection has effect for the purposes of capital gains tax, to April 1998; and

(ii) where that subsection has effect for the purposes of corporation tax, to the month in which the disposal occurs.**]**

(2) If, in relation to any item of expenditure—

(a) the expenditure is attributable to the acquisition of relevant securities, within the meaning of section 108, which are disposed of within the period of 10 days beginning on the day on which the expenditure was incurred, or

(b) RD, as defined in subsection (1) above, is equal to or less than RI, as so defined,

the indexed rise in that item is nil.

(3) If, in relation to any item of expenditure, the figure determined in accordance with the formula in subsection (1) above would, apart from this subsection, be a figure having more than 3 decimal places, it shall be rounded to the nearest third decimal place.

(4) For the purposes of this section—

(a) relevant allowable expenditure falling within paragraph (a) of subsection (1) of section 38 shall be assumed to have been incurred at the time when the asset in question was acquired or provided; and

(b) relevant allowable expenditure falling within paragraph (b) of that subsection shall be assumed to have been incurred at the time when that expenditure became due and payable.

Textual Amendments

F81 Words in s. 54(1) substituted (with effect in accordance with s. 122(6)(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 122(2)**

F82 S. 54(1A) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 122(3)**

55 Assets owned on 31st March 1982 or acquired on a no gain/no loss disposal.

(1) For the purpose of computing the indexation allowance on a disposal of an asset where, on 31st March 1982, the asset was held by the person making the disposal, it shall be assumed that on that date the asset was sold by the person making the disposal and immediately reacquired by him at its market value on that date.

(2) Except where an election under section 35(5) has effect, neither subsection (1) above nor section 35(2) shall apply for the purpose of computing the indexation allowance in a case where that allowance would be greater if they did not apply.

(3) If under subsection (1) above it is to be assumed that any asset was on 31st March 1982 sold by the person making the disposal and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by him in providing the asset as if it were made in respect of expenditure which, on that assumption, was incurred by him in reacquiring the asset on 31st March 1982.

(4) Where, after 31st March 1982, an asset which was held on that date has been merged or divided or has changed its nature or rights in or over the asset have been created, then, subject to subsection (2) above, subsection (1) above shall have effect to determine for the purposes of section 43 the amount of the consideration for the acquisition of the asset which was so held.

(5) Subsection (6) below applies to a disposal of an asset which is not a no gain/no loss disposal if—

(a) the person making the disposal acquired the asset after 31st March 1982; and

(b) the disposal by which he acquired the asset and any previous disposal of the asset after 31st March 1982 was a no gain/no loss disposal;

and for the purposes of this subsection a no gain/no loss disposal is one on which, by virtue of section 257(2) or 259(2) or any of the enactments specified in section 35(3)(d), neither a gain nor a loss accrues (or accrued) to the person making the disposal.

(6) Where this subsection applies to a disposal of an asset—

(a) the person making the disposal shall be treated for the purpose of computing the indexation allowance on the disposal as having held the asset on 31st March 1982; and

(b) for the purpose of determining any gain or loss on the disposal, the consideration which, apart from this subsection, that person would be treated as having given for the asset shall be taken to be reduced by deducting therefrom any indexation allowance brought into account by virtue of section 56(2) on any disposal falling within subsection (5)(b) above.

[F83(7) The rules in subsection (8) below apply (after the application of section 53 but before the application of section 35(3) or (4)) to give the gain or loss for the purposes of this Act where—

(a) subsection (6) above applies to the disposal (the "disposal in question") of an asset by any person (the "transferor"), and

(b) but for paragraph (b) of that subsection, the consideration the transferor would be treated as having given for the asset would include an amount or amounts of indexation allowance brought into account by virtue of section 56(2) on any disposal made before 30th November 1993.

(8) The rules are as follows—

(a) where (apart from this subsection) there would be a loss, an amount equal to the rolled-up indexation shall be added to it so as to increase it,

(b) where (apart from this subsection) the unindexed gain or loss would be nil, there shall be a loss of an amount equal to the rolled-up indexation, and

(c) where (apart from this subsection)—

(i) there would be an unindexed gain, and

(ii) the gain or loss would be nil but the amount of the indexation allowance used to extinguish the gain would be less than the rolled-up indexation,

the difference shall constitute a loss.

(9) In this section the "rolled-up indexation" means, subject to subsections (10) and (11) below, the amount or, as the case may be, the aggregate of the amounts referred to in subsection (7)(b) above; and subsections (10) and (11) below shall, as well as applying on the disposal in question, be treated as having applied on any previous part disposal by the transferor.

(10) Where, for the purposes of any disposal of the asset by the transferor, any amount falling within any, or any combination of, paragraphs (a) to (c) of section 38(1) is required by any enactment to be excluded, reduced or written down, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (11) below on a previous part disposal) shall be reduced in proportion to any reduction made in the amount falling within the paragraph, or the combination of paragraphs, in question.

(11) Where the transferor makes a part disposal of the asset at any time, then, for the purposes of that and any subsequent disposal, the amount or aggregate referred to in subsection (9) above (or so much of it as remains after the application of this subsection and subsection (10) above on a previous part disposal by him or after the application of subsection (10) above on the part disposal) shall be apportioned between the property disposed of and the property which remains in the same proportions as the sums falling within section 38(1)(a) and (b).**]**

Textual Amendments

F83 S. 55(7)-(11) inserted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(4)** (with Sch. 12)

56 Part disposals and disposals on a no-gain/no-loss basis.

(1) For the purpose of determining the indexation allowance (if any) on the occasion of a part disposal of an asset, the apportionment under section 42 of the sums which make up the relevant allowable expenditure shall be effected before the application of section 54 and, accordingly, in relation to a part disposal—

(a) references in section 54 to an item of expenditure shall be construed as references to that part of that item which is so apportioned for the purposes of the computation of the unindexed gain [F84]... on the part disposal; and

(b) no indexation allowance shall be determined by reference to the part of each item of relevant allowable expenditure which is apportioned to the property which remains undisposed of.

(2) **[**[F85]On a no gain/no loss disposal by any person ("the transferor")**]**—

(a) the amount of the consideration shall be calculated for the purposes of this Act on the assumption that, on the disposal, an unindexed gain accrues to the transferor which is equal to the indexation allowance on the disposal, and

(b) the disposal shall accordingly be one on which, after taking account of the indexation allowance, neither a gain nor a loss accrues;

and for the purposes of the application of sections 53 and 54 there shall be disregarded so much of any enactment as provides that, on the subsequent disposal of the asset by the person acquiring the asset on the disposal ("the transferee"), the transferor's acquisition of the asset is to be treated as the transferee's acquisition of it.

[[F86](3) Where apart from this subsection—

(a) a loss would accrue on the disposal of an asset, and

(b) the sums allowable as a deduction in computing that loss would include an amount attributable to the application of the assumption in subsection (2) above on any no gain/no loss disposal made on or after 30th November 1993,

those sums shall be determined as if that subsection had not applied on any such disposal made on or after that date and the loss shall be reduced accordingly or, if those sums are then equal to or less than the consideration for the disposal, the disposal shall be one on which neither a gain nor a loss accrues.

(4) For the purposes of this section a no gain/no loss disposal is one which, by virtue of any enactment other than section 35(4), 53(1) or this section, is treated as a disposal on which neither a gain nor a loss accrues to the person making the disposal.**]**

Textual Amendments

F84 Words in s. 56(1)(a) repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 26 Pt. V(8)**

F85 Words in s. 56(2) substituted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(5)(a)** (with Sch. 12)

F86 S. 56(3)(4) added (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(5)(b)** (with Sch. 12)

57 Receipts etc. which are not treated as disposals but affect relevant allowable expenditure.

(1) This section applies where, in determining the relevant allowable expenditure in relation to a disposal of an asset, account is required to be taken, as mentioned in section 53(3), of any provision of any enactment which, by reference to a relevant event, reduces the whole or any part of an item of expenditure as mentioned in that subsection.

(2) For the purpose of determining, in a case where this section applies, the indexation allowance (if any) to which the person making the disposal is entitled, no account shall

in the first instance be taken of the provision referred to in subsection (1) above in calculating the indexed rise in the item of expenditure to which that provision applies but, from that indexed rise as so calculated, there shall be deducted a sum equal to the indexed rise (determined as for the purposes of the actual disposal) in a notional item of expenditure which—

(a) is equal to the amount of the reduction effected by the provision concerned; and

(b) was incurred on the date of the relevant event referred to in subsection (1) above.

(3) In this section "relevant event" means any event which does not fall to be treated as a disposal for the purposes of this Act.

PART III

INDIVIDUALS, PARTNERSHIPS, TRUSTS AND COLLECTIVE INVESTMENT SCHEMES

CHAPTER I

MISCELLANEOUS PROVISIONS

58 Husband and wife.

(1) If, in any year of assessment, and in the case of a woman who in that year of assessment is a married woman living with her husband, the man disposes of an asset to the wife, or the wife disposes of an asset to the man, both shall be treated as if the asset was acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(2) This section shall not apply—

(a) if until the disposal the asset formed part of trading stock of a trade carried on by the one making the disposal, or if the asset is acquired as trading stock for the purposes of a trade carried on by the one acquiring the asset, or

(b) if the disposal is by way of donatio mortis causa,

but this section shall have effect notwithstanding the provisions of section 18 or 161, or of any other provisions of this Act fixing the amount of the consideration deemed to be given on a disposal or acquisition.

59 Partnerships.

Where 2 or more persons carry on a trade or business in partnership—

(a) tax in respect of chargeable gains accruing to them on the disposal of any partnership assets shall, in Scotland as well as elsewhere in the United Kingdom, be assessed and charged on them separately, and

(b) any partnership dealings shall be treated as dealings by the partners and not by the firm as such, [F87]...

[F87](c) . . . . . .

Textual Amendments

F87 S. 59(c) and preceding word repealed (with effect in accordance with Sch. 29 Pt. VIII(16) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(16)**

60 Nominees and bare trustees.

(1) In relation to assets held by a person as nominee for another person, or as trustee for another person absolutely entitled as against the trustee, or for any person who would be so entitled but for being an infant or other person under disability (or for 2 or more persons who are or would be jointly so entitled), this Act shall apply as if the property were vested in, and the acts of the nominee or trustee in relation to the assets were the acts of, the person or persons for whom he is the nominee or trustee (acquisitions from or disposals to him by that person or persons being disregarded accordingly).

(2) It is hereby declared that references in this Act to any asset held by a person as trustee for another person absolutely entitled as against the trustee are references to a case where that other person has the exclusive right, subject only to satisfying any outstanding charge, lien or other right of the trustees to resort to the asset for payment of duty, taxes, costs or other outgoings, to direct how that asset shall be dealt with.

Modifications etc. (not altering text)

C56 S. 60(1) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 21(2)(d)**

61 Funds in court.

(1) For the purposes of section 60, funds in court held by the Accountant General shall be regarded as held by him as nominee for the persons entitled to or interested in the funds, or as the case may be for their trustees.

(2) Where funds in court standing to an account are invested or, after investment, are realised, the method by which the Accountant General effects the investment or the realisation of investments shall not affect the question whether there is for the purposes of this Act an acquisition, or as the case may be a disposal, of an asset representing funds in court standing to the account, and in particular there shall for those purposes be an acquisition or disposal of shares in a court investment fund notwithstanding that the investment in such shares of funds in court standing to an account, or the realisation of funds which have been so invested, is effected by setting off, in the Accountant General's accounts, investment in one account against realisation of investments in another.

(3) In this section "funds in court" means—

(a) money in the Supreme Court, money in county courts and statutory deposits described in section 40 of the [M11]Administration of Justice Act 1982, and

(b) money in the Supreme Court of Judicature of Northern Ireland and money in a county court in Northern Ireland,

and investments representing such money; and references in this section to the Accountant General are references to the Accountant General of the Supreme Court of Judicature in England and, in relation to money within paragraph (b) above and investments representing such money, include references to the Accountant General

of the Supreme Court of Judicature of Northern Ireland or any other person by whom such funds are held.

Marginal Citations
M11 1982 c. 53.

62 Death: general provisions.

(1) For the purposes of this Act the assets of which a deceased person was competent to dispose—

(a) shall be deemed to be acquired on his death by the personal representatives or other person on whom they devolve for a consideration equal to their market value at the date of the death, but

(b) shall not be deemed to be disposed of by him on his death (whether or not they were the subject of a testamentary disposition).

(2) Allowable losses sustained by an individual in the year of assessment in which he dies may, so far as they cannot be deducted from chargeable gains accruing in that year, be deducted from chargeable gains accruing to the deceased in the 3 years of assessment preceding the year of assessment in which the death occurs, taking chargeable gains accruing in a later year before those accruing in an earlier year.

[F88(2A) Amounts deductible from chargeable gains for any year in accordance with subsection (2) above shall not be so deductible from any such gains so far as they are gains that are brought into account for that year by virtue of section 2(5)(b).

(2B) Where deductions under subsection (2) above fall to be made from the chargeable gains for any year, the provisions of this Act relating to taper relief shall have effect as if those deductions were deductions under section 2(2)(a) and (b) and, accordingly, as if—

(a) those deductions were to be made (before the application of the relief) in computing for that year the excess (if any) mentioned in section 2A(1); and

(b) for the purpose of determining the gains represented in that excess, the gains for that year from which those deductions are treated as made were to be ascertained in accordance with section 2A(6).**]**

(3) In relation to property forming part of the estate of a deceased person the personal representatives shall for the purposes of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the personal representatives), and that body shall be treated as having the deceased's residence, ordinary residence, and domicile at the date of death.

(4) On a person acquiring any asset as legatee (as defined in section 64)—

(a) no chargeable gain shall accrue to the personal representatives, and

(b) the legatee shall be treated as if the personal representatives' acquisition of the asset had been his acquisition of it.

(5) Notwithstanding section 17(1) no chargeable gain shall accrue to any person on his making a disposal by way of donatio mortis causa.

(6) Subject to subsections (7) and (8) below, where within the period of 2 years after a person's death any of the dispositions (whether effected by will, under the law relating

to intestacy or otherwise) of the property of which he was competent to dispose are varied, or the benefit conferred by any of those dispositions is disclaimed, by an instrument in writing made by the persons or any of the persons who benefit or would benefit under the dispositions—

(a) the variation or disclaimer shall not constitute a disposal for the purposes of this Act, and

(b) this section shall apply as if the variation had been effected by the deceased or, as the case may be, the disclaimed benefit had never been conferred.

(7) Subsection (6) above does not apply to a variation unless the person or persons making the instrument so elect by notice given to the Board within 6 months after the date of the instrument or such longer time as the Board may allow.

(8) Subsection (6) above does not apply to a variation or disclaimer made for any consideration in money or money's worth other than consideration consisting of the making of a variation or disclaimer in respect of another of the dispositions.

(9) Subsection (6) above applies whether or not the administration of the estate is complete or the property has been distributed in accordance with the original dispositions.

(10) In this section references to assets of which a deceased person was competent to dispose are references to assets of the deceased which (otherwise than in right of a power of appointment or of the testamentary power conferred by statute to dispose of entailed interests) he could, if of full age and capacity, have disposed of by his will, assuming that all the assets were situated in England and, if he was not domiciled in the United Kingdom, that he was domiciled in England, and include references to his severable share in any assets to which, immediately before his death, he was beneficially entitled as a joint tenant.

Textual Amendments

F88 S. 62(2A)(2B) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 5**

63 Death: application of law in Scotland.

(1) The provisions of this Act, so far as relating to the consequences of the death of an heir of entail in possession of any property in Scotland subject to an entail, whether sui juris or not, or of a proper liferenter of any property, shall have effect subject to the provisions of this section.

(2) For the purposes of this Act, on the death of any such heir or liferenter the heir of entail next entitled to the entailed property under the entail or, as the case may be, the person (if any) who, on the death of the liferenter, becomes entitled to possession of the property as fiar shall be deemed to have acquired all the assets forming part of the property at the date of the deceased's death for a consideration equal to their market value at that date.

64 Expenses in administration of estates and trusts.

(1) In the case of a gain accruing to a person on the disposal of, or of a right or interest in or over, an asset to which he became absolutely entitled as legatee or as against the trustees of settled property—

(a) any expenditure within section 38(2) incurred by him in relation to the transfer of the asset to him by the personal representatives or trustees, and

(b) any such expenditure incurred in relation to the transfer of the asset by the personal representatives or trustees,

shall be allowable as a deduction in the computation of the gain accruing to that person on the disposal.

(2) In this Act, unless the context otherwise requires, "legatee" includes any person taking under a testamentary disposition or on an intestacy or partial intestacy, whether he takes beneficially or as trustee, and a person taking under a donatio mortis causa shall be treated (except for the purposes of section 62) as a legatee and his acquisition as made at the time of the donor's death.

(3) For the purposes of the definition of "legatee" above, and of any reference in this Act to a person acquiring an asset "as legatee", property taken under a testamentary disposition or on an intestacy or partial intestacy includes any asset appropriated by the personal representatives in or towards satisfaction of a pecuniary legacy or any other interest or share in the property devolving under the disposition or intestacy.

65 Liability for tax of trustees or personal representatives.

[F89(1) Subject to subsection (3) below, capital gains tax chargeable in respect of chargeable gains accruing to the trustees of a settlement or capital gains tax due from the personal representatives of a deceased person may be assessed and charged on and in the name of any one or more of the relevant trustees or the relevant personal representatives.**]**

(2) Subject to section 60 and any other express provision to the contrary, chargeable gains accruing to the trustees of a settlement or to the personal representatives of a deceased person, and capital gains tax chargeable on or in the name of such trustees or personal representatives, shall not be regarded for the purposes of this Act as accruing to, or chargeable on, any other person, nor shall any trustee or personal representative be regarded for the purposes of this Act as an individual.

[F90(3) Where section 80 applies as regards the trustees of a settlement ("the migrating trustees"), nothing in subsection (1) above shall enable any person—

(a) who ceased to be a trustee of the settlement before the end of the relevant period, and

(b) who shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom,

to be assessed and charged to any capital gains tax which is payable by the migrating trustees by virtue of section 80(2).

(4) In this section—

"the relevant period" has the same meaning as in section 82;

"the relevant trustees", in relation to any chargeable gains, means the trustees in the year of assessment in which the chargeable gains accrue and any subsequent trustees of the settlement, and "the relevant personal representatives" has a corresponding meaning.**]**

Textual Amendments

F89 S. 65(1) substituted (with effect in accordance with s. 103(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 114(1)**

F90 S. 65(3)(4) inserted (with effect in accordance with s. 103(7) of the amending Act) by Finance Act 1995 (c. 4), **s. 114(2)**

66 Insolvents' assets.

(1) In relation to assets held by a person as trustee or assignee in bankruptcy or under a deed of arrangement this Act shall apply as if the assets were vested in, and the acts of the trustee or assignee in relation to the assets were the acts of, the bankrupt or debtor (acquisitions from or disposals to him by the bankrupt or debtor being disregarded accordingly), and tax in respect of any chargeable gains which accrue to any such trustee or assignee shall be assessable on and recoverable from him.

(2) Assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor shall for the purposes of this Act be regarded as held by a personal representative of the deceased and—

(a) subsection (1) above shall not apply after the death, and

(b) section 62(1) shall apply as if any assets held by a trustee or assignee in bankruptcy or under a deed of arrangement at the death of the bankrupt or debtor were assets of which the deceased was competent to dispose and which then devolved on the trustee or assignee as if he were a personal representative.

(3) Assets vesting in a trustee in bankruptcy after the death of the bankrupt or debtor shall for the purposes of this Act be regarded as held by a personal representative of the deceased, and subsection (1) above shall not apply.

(4) The definition of "settled property" in section 68 shall not include any property as being property held by a trustee or assignee in bankruptcy or under a deed of arrangement.

(5) In this section—

"deed of arrangement" means a deed of arrangement to which the [M12]Deeds of Arrangement Act 1914 or any corresponding enactment forming part of the law of Scotland or Northern Ireland applies, and

"trustee in bankruptcy" includes a permanent trustee within the meaning of the [M13]Bankruptcy (Scotland) Act 1985.

Marginal Citations

M12 1914 c. 47.

M13 1985 c. 66.

67 Provisions applicable where section 79 of the Finance Act 1980 has applied.

(1) In this section "a claim" means a claim under section 79 of the Finance Act 1980 ("section 79") and "relief" means relief under that section (which provided general relief for gifts).

(2) Where a disposal in respect of which a claim is or has been made is or proves to be a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

(a) the inheritance tax attributable to the value of the asset; and

(b) the amount of the chargeable gain as computed apart from this subsection;

and in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

(3) Where an amount of inheritance tax—

(a) falls to be redetermined in consequence of the transferor's death within 7 years of making the chargeable transfer in question; or

(b) is otherwise varied,

after it has been taken into account under subsection (2) above (or under section 79(5)), all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

(4) Where—

(a) a claim for relief has been made in respect of the disposal of an asset to a trustee, and

(b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a),

sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset, or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

(5) Subsection (4) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.

(6) Section 168 shall apply where relief has been given—

(a) with the substitution for subsection (1) of the following—

"(1) If—

(a) relief has been given under section 79 of the Finance Act 1980 in respect of a disposal made after 5th April 1981 to an individual ("the relevant disposal"); and

(b) at a time when he has not disposed of the asset in question, the transferee becomes neither resident nor ordinarily resident in the United Kingdom,

then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 67) on the relevant disposal."; and

(b) with the substitution in subsections (2), (6) and (10) for the references to section 165(4)(b) of references to section 79(1)(b).

(7) In this section "held-over gain", in relation to a disposal, means the chargeable gain which would have accrued on that disposal apart from section 79, reduced where applicable in accordance with subsection (3) of that section, and references to inheritance tax include references to capital transfer tax.

CHAPTER II

SETTLEMENTS

General provisions

68 Meaning of "settled property".

In this Act, unless the context otherwise requires, "settled property" means any property held in trust other than property to which section 60 applies.

69 Trustees of settlements.

(1) In relation to settled property, the trustees of the settlement shall for the purposes of this Act be treated as being a single and continuing body of persons (distinct from the persons who may from time to time be the trustees), and that body shall be treated as being resident and ordinarily resident in the United Kingdom unless the general administration of the trusts is ordinarily carried on outside the United Kingdom and the trustees or a majority of them for the time being are not resident or not ordinarily resident in the United Kingdom.

(2) Notwithstanding subsection (1) above, a person carrying on a business which consists of or includes the management of trusts, and acting as trustee of a trust in the course of that business, shall be treated in relation to that trust as not resident in the United Kingdom if the whole of the settled property consists of or derives from property provided by a person not at the time (or, in the case of a trust arising under a testamentary disposition or on an intestacy or partial intestacy, at his death) domiciled, resident or ordinarily resident in the United Kingdom, and if in such a case the trustees or a majority of them are or are treated in relation to that trust as not resident in the United Kingdom, the general administration of the trust shall be treated as ordinarily carried on outside the United Kingdom.

(3) For the purposes of this section, and of sections 71(1) and 72(1), where part of the property comprised in a settlement is vested in one trustee or set of trustees and part in another (and in particular where settled land within the meaning of the [M14]Settled Land Act 1925 is vested in the tenant for life and investments representing capital money are vested in the trustees of the settlement), they shall be treated as together constituting and, in so far as they act separately, as acting on behalf of a single body of trustees.

(4) If tax assessed on the trustees, or any one trustee, of a settlement in respect of a chargeable gain accruing to the trustees is not paid within 6 months from the date when it becomes payable by the trustees or trustee, and before or after the expiration of that period of 6 months the asset in respect of which the chargeable gain accrued, or any part of the proceeds of sale of that asset, is transferred by the trustees to a person who as against the trustees is absolutely entitled to it, that person may at any time within 2 years from the time when the tax became payable be assessed and charged (in the

name of the trustees) to an amount of capital gains tax not exceeding tax chargeable on an amount equal to the amount of the chargeable gain and, where part only of the asset or of the proceeds was transferred, not exceeding a proportionate part of that amount.

Marginal Citations
M14 1925 c. 18.

70 Transfers into settlement.

A transfer into settlement, whether revocable or irrevocable, is a disposal of the entire property thereby becoming settled property notwithstanding that the transferor has some interest as a beneficiary under the settlement and notwithstanding that he is a trustee, or the sole trustee, of the settlement.

71 Person becoming absolutely entitled to settled property.

(1) On the occasion when a person becomes absolutely entitled to any settled property as against the trustee all the assets forming part of the settled property to which he becomes so entitled shall be deemed to have been disposed of by the trustee, and immediately reacquired by him in his capacity as a trustee within section 60(1), for a consideration equal to their market value.

[F91(2) Where, in any case in which a person ("the beneficiary") becomes absolutely entitled to any settled property as against the trustee, an allowable loss would (apart from this subsection) have accrued to the trustee on the deemed disposal under subsection (1) above of an asset comprised in that property—

(a) that loss shall be treated, to the extent only that it cannot be deducted from pre-entitlement gains of the trustee, as an allowable loss accruing to the beneficiary (instead of to the trustee); but

(b) any allowable loss treated as accruing to the beneficiary under this subsection shall be deductible under this Act from chargeable gains accruing to the beneficiary to the extent only that it can be deducted from gains accruing to the beneficiary on the disposal by him of—

(i) the asset on the deemed disposal of which the loss accrued; or

(ii) where that asset is an estate, interest or right in or over land, that asset or any asset deriving from that asset.

(2A) In subsection (2) above "pre-entitlement gain", in relation to an allowable loss accruing to a trustee on the deemed disposal of any asset comprised in any settled property, means a chargeable gain accruing to that trustee on—

(a) a disposal which, on the occasion on which the beneficiary becomes absolutely entitled as against the trustee to that property, is deemed under subsection (1) above to have taken place; or

(b) any other disposal taking place before that occasion but in the same year of assessment.

(2B) For the purposes of subsection (2)(b)(ii) above an asset ("the relevant asset") derives from another if, in a case where—

(a) assets have merged,

(b) an asset has divided or otherwise changed its nature, or

(c) different rights or interests in or over any asset have been created or extinguished at different times,

the value of the relevant asset is wholly or partly derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from the other asset.

(2C) The rules set out in subsection (2D) below shall apply (notwithstanding any other rules contained in this Act or in section 113(2) of the Finance Act 1995 (order of deduction)) —

(a) for determining for the purposes of this section whether an allowable loss accruing to the trustee, or treated as accruing to the beneficiary, can be deducted from particular chargeable gains for any year of assessment; and

(b) for the making of deductions of allowable losses from chargeable gains in cases where it has been determined that such an allowable loss can be deducted from particular chargeable gains.

(2D) Those rules are as follows—

(a) allowable losses accruing to the trustee on a deemed disposal under subsection (1) above shall be deducted before any deduction is made in respect of any other allowable losses accruing to the trustee in that year;

(b) allowable losses treated as accruing to the beneficiary under this section, so far as they cannot be deducted in a year of assessment as mentioned in subsection (2)(b) above, may be carried forward from year to year until they can be so deducted; and

(c) allowable losses treated as accruing to the beneficiary for any year of assessment under this section, and allowable losses carried forward to any year of assessment under paragraph (b) above—

(i) shall be deducted before any deduction is made in respect of any allowable losses accruing to the beneficiary in that year otherwise than by virtue of this section; and

(ii) in the case of losses carried forward to any year, shall be deductible as if they were losses actually accruing in that year.**]**

(3) References in this section to the case where a person becomes absolutely entitled to settled property as against the trustee shall be taken to include references to the case where a person would become so entitled but for being an infant or other person under disability.

Textual Amendments

F91 S. 71(2)-(2D) substituted for s. 71(2) (with application in accordance with s. 75(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 75(1)**

Modifications etc. (not altering text)

C57 S. 71 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 21(2)(d)**

72 Termination of life interest on death of person entitled.

(1) On the termination, on the death of the person entitled to it, of **[**F92an**]** interest in possession in all or any part of settled property—

(a) the whole or a corresponding part of each of the assets forming part of the settled property and not ceasing at that time to be settled property shall be deemed for the purposes of this Act at that time to be disposed of and immediately reacquired by the trustee for a consideration equal to the whole or a corresponding part of the market value of the asset; but

(b) no chargeable gain shall accrue on that disposal.

For the purposes of this subsection **[**F92an**]** interest which is a right to part of the income of settled property shall be treated as **[**F92an**]** interest in a corresponding part of the settled property.

(2) Subsection (1) above shall apply where the person entitled to **[**F93an**]** interest in possession in all or any part of settled property dies (although the interest does not then terminate) as it applies on the termination of such **[**F93an**]** interest.

[F94(3) This section shall apply on the death of the person entitled to any annuity payable out of, or charged on, settled property or the income of settled property as it applies on the death of a person whose interest in possession in the whole or any part of settled property terminates on his death.

(4) Where, in the case of any entitlement to an annuity created by a settlement some of the settled property is appropriated by the trustees as a fund out of which the annuity is payable, and there is no right of recourse to, or to the income of, settled property not so appropriated, then without prejudice to subsection (5) below, the settled property so appropriated shall, while the annuity is payable, and on the occasion of the death of the person entitled to the annuity, be treated for the purposes of this section as being settled property under a separate settlement.**]**

(5) If there is **[**F95an**]** interest in a part of the settled property and, where that is **[**F95an**]** interest in income, there is no right of recourse to, or to the income of, the remainder of the settled property, the part of the settled property in which the F96... interest subsists shall while it subsists be treated for the purposes of this section as being settled property under a separate settlement.

Textual Amendments

F92 Word in s. 72(1) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 5(2)**

F93 Word in s. 72(2) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 5(2)**

F94 S. 72(3)(4) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 5(3)**

F95 Word in s. 72(5) substituted (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 5(2)**

F96 Word in s. 72(5) repealed (with effect in accordance with Sch. 39 para. 5(4) of the amending Act) by Finance Act 1996 (c. 8), Sch. 39 para. 5(2), **Sch. 41 Pt. VIII(4)**

73 Death of life tenant: exclusion of chargeable gain.

(1) Where, by virtue of section 71(1), the assets forming part of any settled property are deemed to be disposed of and reacquired by the trustee on the occasion when a person becomes (or would but for a disability become) absolutely entitled thereto as against

the trustee, then, if that occasion is the **[**F97death of a person entitled to an interest in possession in the settled property**]** —

(a) no chargeable gain shall accrue on the disposal, and

(b) if on the death the property reverts to the disponer, the disposal and reacquisition under that subsection shall be deemed to be for such consideration as to secure that neither a gain nor a loss accrues to the trustee, and shall, if the trustee had first acquired the property at a date earlier than 6th April 1965, be deemed to be at that earlier date.

(2) Where the F98... interest referred to in subsection (1) above is an interest in part only of the settled property to which section 71 applies, subsection (1)(a) above shall not apply but any chargeable gain accruing on the disposal shall be reduced by a proportion corresponding to that represented by the part.

(3) The last sentence of subsection (1) of section 72 and **[**F99subsections (3) to (5) of that section shall apply for the purposes of this section**]** as they apply for the purposes of section 72(1).

Textual Amendments

F97 Words in s. 73(1) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 6(2)**

F98 Word in s. 73(2) repealed (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by Finance Act 1996 (c. 8), Sch. 39 para. 6(3), **Sch. 41 Pt. VIII(4)**

F99 Words in s. 73(3) substituted (with effect in accordance with Sch. 39 para. 6(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 6(4)**

74 Effect on sections 72 and 73 of relief under section 165 or 260.

(1) This section applies where—

(a) a claim for relief was made under section 165 or 260 in respect of the disposal of an asset to a trustee, and

(b) the trustee is deemed to have disposed of the asset, or part of it, by virtue of section 71(1) or 72(1)(a).

(2) Sections 72(1)(b) and 73(1)(a) shall not apply to the disposal of the asset or part by the trustee, but any chargeable gain accruing to the trustee on the disposal shall be restricted to the amount of the held-over gain (or a corresponding part of it) on the disposal of the asset to him.

(3) Subsection (2) above shall not have effect in a case within section 73(2) but in such a case the reduction provided for by section 73(2) shall be diminished by an amount equal to the proportion there mentioned of the held-over gain.

(4) In this section "held-over gain" has the same meaning as in section 165 or, as the case may be, 260.

F100 75 Death of annuitant.

. . . . . .

Textual Amendments

F100 S. 75 repealed (with effect in accordance with Sch. 39 of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. VIII(4)**

76 Disposal of interests in settled property.

(1) **[**F101Subject to subsection (1A) below**]** no chargeable gain shall accrue on the disposal of an interest created by or arising under a settlement (including, in particular, an annuity or life interest, and the reversion to an annuity or life interest) by the person for whose benefit the interest was created by the terms of the settlement or by any other person except one who acquired, or derives his title from one who acquired, the interest for a consideration in money or money's worth, other than consideration consisting of another interest under the settlement.

[F102(1A) Subject to subsection (3) below, subsection (1) above does not apply if—

(a) the settlement falls within subsection (1B) below; or

(b) the property comprised in the settlement is or includes property deriving directly or indirectly from a settlement falling within that subsection.

(1B) A settlement falls within this subsection if there has been a time when the trustees of that settlement—

(a) were not resident or ordinarily resident in the United Kingdom; or

(b) fell to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.**]**

(2) Subject to subsection (1) above, where a person who has acquired an interest in settled property (including in particular the reversion to an annuity or life interest) becomes, as the holder of that interest, absolutely entitled as against the trustee to any settled property, he shall be treated as disposing of the interest in consideration of obtaining that settled property (but without prejudice to any gain accruing to the trustee on the disposal of that property deemed to be effected by him under section 71(1)).

[F103(3) Subsection (1A) above shall not prevent subsection (1) above from applying where the disposal in question is a disposal in consideration of obtaining settled property that is treated as made under subsection (2) above.**]**

Textual Amendments

F101 Words in s. 76(1) inserted (with effect in accordance with s. 128(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 128(1)(a)**

F102 S. 76(1A)(1B) inserted (with effect in accordance with s. 128(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 128(1)(b)**(2)

F103 S. 76(3) inserted (with effect in accordance with s. 128(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 128(1)(c)**(3)

Modifications etc. (not altering text)

C58 S. 76(1) excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 21(2)(e)**

[F104 77 Charge on settlor with interest in settlement.

(1) Where in a year of assessment—

(a) chargeable gains accrue to the trustees of a settlement from the disposal of any or all of the settled property,

(b) after making any deduction provided for by section 2(2) in respect of disposals of the settled property there remains an amount on which the trustees would, disregarding section 3, be chargeable to tax for the year in respect of those gains, and

(c) at any time during the year the settlor has an interest in the settlement,

the trustees shall not be chargeable to tax in respect of those **[**F105gains**]** but instead chargeable gains of an amount equal to that referred to in paragraph (b) shall be treated as accruing to the settlor in that year.

(2) Subject to the following provisions of this section, a settlor shall be regarded as having an interest in a settlement if—

(a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of the settlor or his spouse in any circumstances whatsoever, or

(b) the settlor or his spouse enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.

(3) The references in subsection (2)(a) and (b) above to the spouse of the settlor do not include—

(a) a person to whom the settlor is not for the time being married but may later marry, or

(b) a spouse from whom the settlor is separated under an order of a court, or under a separation agreement or in such circumstances that the separation is likely to be permanent, or

(c) the widow or widower of the settlor.

(4) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as none of the property which may at any time be comprised in the settlement, and no derived property, can become payable or applicable as mentioned in that provision except in the event of—

(a) the bankruptcy of some person who is or may become beneficially entitled to the property or any derived property, or

(b) an assignment of or charge on the property or any derived property being made or given by some such person, or

(c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or

(d) the death of a child of the settlor who had become beneficially entitled to the property or any derived property at an age not exceeding 25.

(5) A settlor shall not be regarded as having an interest in a settlement by virtue of subsection (2)(a) above if and so long as some person is alive and under the age of 25 during whose life the property or any derived property cannot become payable or applicable as mentioned in that provision except in the event of that person becoming bankrupt or assigning or charging his interest in that property.

(6) This section does not apply—

(a) where the settlor dies during the year; or

(b) in a case where the settlor is regarded as having an interest in the settlement by reason only of—

(i) the fact that property is, or will or may become, payable to or applicable for the benefit of his spouse, or

(ii) the fact that a benefit is enjoyed by his spouse,

where the spouse dies, or the settlor and the spouse cease to be married, during the year.

[[F106](6A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of any amount that is treated under this section as an amount of chargeable gains accruing to the settlor, chargeable gains that are treated as accruing to the settlor under this section shall not be eligible for taper relief.**]**

(7) This section does not apply unless the settlor is, and the trustees are, either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year.

[[F107](8) In this section "derived property", in relation to any property, means—

(a) income from that property,

(b) property directly or indirectly representing—

(i) proceeds of that property, or

(ii) proceeds of income from that property, or

(c) income from property which is derived property by virtue of paragraph (b) above.**]]**

Textual Amendments

F104 S. 77 substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 27**

F105 Word in s. 77(1) inserted (retrospective to 1.5.1995) by Finance Act 2006 (c. 25), **Sch. 12 para. 13(1)**(3)

F106 S. 77(6A) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 6(1)**

F107 S. 77(8) substituted (retrospective to 1.5.1995) by Finance Act 2006 (c. 25), **Sch. 12 para. 13(2)**(3)

78 Right of recovery.

(1) Where any tax becomes chargeable on and is paid by a person in respect of gains treated as accruing to him under **[**[F108]section 77**]** he shall be entitled—

(a) to recover the amount of the tax from any trustee of the settlement, and

(b) for that purpose to require an inspector to give him a certificate specifying—

(i) the amount of the gains accruing to the trustees in respect of which he has paid tax; and

(ii) the amount of tax paid;

and any such certificate shall be conclusive evidence of the facts stated in it.

(2) In order to ascertain for the purposes of subsection (1) above the amount of tax chargeable for any year by virtue of **[**[F108]section 77**]** in respect of gains treated as accruing to any person, those gains shall be regarded as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

(3) In a case where—

(a) gains are treated as accruing to a person in a year under section 86(4), and

(b) gains are treated as accruing to the same person under **[**F108section 77**]** in the same year,

subsection (2) above shall have effect subject to section 86(4)(b).

Textual Amendments

F108 Words in s. 78(1)-(3) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 28**

79 Provisions supplemental to sections 77 and 78.

(1) For the purposes of this section and sections 77 and 78 a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.

(2) In this section and sections 77 and 78—

(a) references to settled property (and to property comprised in a settlement), in relation to any settlor, are references only to property originating from that settlor, F109...

F109(b) . . . . . .

(3) References in this section to property originating from a settlor are references to—

(a) property which that settlor has provided directly or indirectly for the purposes of the settlement,

(b) property representing that property, and

(c) so much of any property which represents both property so provided and other property as, on a just apportionment, represents the property so provided.

F110(4) . . . . . .

(5) In **[**F111subsection (3)**]** above—

(a) references to property F112... which a settlor has provided directly or indirectly include references to property F112... which has been provided directly or indirectly by another person in pursuance of reciprocal arrangements with that settlor, but do not include references to property F112... which that settlor has provided directly or indirectly in pursuance of reciprocal arrangements with another person, and

(b) references to property which represents other property include references to property which represents accumulated income from that other property.

(6) An inspector may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within such time as he may direct, not being less than 28 days, such particulars as he thinks necessary for the purposes of this section and sections 77 and 78.

(7) The reference in section 77(1)(a) to gains accruing to trustees from the disposal of settled property includes a reference to gains treated as accruing to them under section 13 and the reference in section 77(1)(b) to deductions in respect of disposals

of the settled property includes a reference to deductions on account of losses treated under section 13 as accruing to the trustees.

(8) Where the trustees of a settlement have elected that section 691(2) of the Taxes Act (certain income of maintenance funds for historic buildings not to be income of settlor etc.) shall have effect in the case of any settlement or part of a settlement in relation to a year of assessment, sections 77 and 78 and subsections (1) to (7) above shall not apply in relation to the settlement or part for the year.

Textual Amendments

F109 S. 79(2)(b) and preceding word repealed (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 29(2), **Sch. 29 Pt. VIII(8)**

F110 S. 79(4) repealed (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 29(3), **Sch. 29 Pt. VIII(8)**

F111 Words in s. 79(5) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 29(4)(a)**

F112 Words in s. 79(5)(a) repealed (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), Sch. 17 para. 29(4)(b), **Sch. 29 Pt. VIII(8)**

Migration of settlements, non-resident settlements and dual resident settlements

80 Trustees ceasing to be resident in U.K.

(1) This section applies if the trustees of a settlement become at any time ("the relevant time") neither resident nor ordinarily resident in the United Kingdom.

(2) The trustees shall be deemed for all purposes of this Act—

(a) to have disposed of the defined assets immediately before the relevant time, and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Subject to subsections (4) and (5) below, the defined assets are all assets constituting settled property of the settlement immediately before the relevant time.

(4) If immediately after the relevant time—

(a) the trustees carry on a trade in the United Kingdom through a branch or agency, and

(b) any assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,

the assets falling within paragraph (b) above shall not be defined assets.

(5) Assets shall not be defined assets if—

(a) they are of a description specified in any double taxation relief arrangements, and

(b) were the trustees to dispose of them immediately before the relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(6) Section 152 shall not apply where the trustees—

(a) have disposed of the old assets, or their interest in them, before the relevant time, and

(b) acquire the new assets, or their interest in them, after that time,

unless the new assets are excepted from this subsection by subsection (7) below.

(7) If at the time when the new assets are acquired—

(a) the trustees carry on a trade in the United Kingdom through a branch or agency, and

(b) any new assets are situated in the United Kingdom and either used in or for the purposes of the trade or used or held for the purposes of the branch or agency,

the assets falling within paragraph (b) above shall be excepted from subsection (6) above.

(8) In this section "the old assets" and "the new assets" have the same meanings as in section 152.

81 Death of trustee: special rules.

(1) Subsection (2) below applies where—

(a) section 80 applies as a result of the death of a trustee of the settlement, and

(b) within the period of 6 months beginning with the death, the trustees of the settlement become resident and ordinarily resident in the United Kingdom.

(2) That section shall apply as if the defined assets were restricted to such assets (if any) as—

(a) would be defined assets apart from this section, and

(b) fall within subsection (3) or (4) below.

(3) Assets fall within this subsection if they were disposed of by the trustees in the period which—

(a) begins with the death, and

(b) ends when the trustees become resident and ordinarily resident in the United Kingdom.

(4) Assets fall within this subsection if—

(a) they are of a description specified in any double taxation relief arrangements,

(b) they constitute settled property of the settlement at the time immediately after the trustees become resident and ordinarily resident in the United Kingdom, and

(c) were the trustees to dispose of them at that time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(5) Subsection (6) below applies where—

(a) at any time the trustees of a settlement become resident and ordinarily resident in the United Kingdom as a result of the death of a trustee of the settlement, and

(b) section 80 applies as regards the trustees of the settlement in circumstances where the relevant time (within the meaning of that section) falls within the period of 6 months beginning with the death.

(6) That section shall apply as if the defined assets were restricted to such assets (if any) as—

(a) would be defined assets apart from this section, and

(b) fall within subsection (7) below.

(7) Assets fall within this subsection if—

(a) the trustees acquired them in the period beginning with the death and ending with the relevant time, and

(b) they acquired them as a result of a disposal in respect of which relief is given under section 165 or in relation to which section 260(3) applies.

82 Past trustees: liability for tax.

(1) This section applies where—

(a) section 80 applies as regards the trustees of a settlement ("the migrating trustees"), and

(b) any capital gains tax which is payable by the migrating trustees by virtue of section 80(2) is not paid within 6 months from the time when it became payable.

(2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of the tax is finally determined, serve on any person to whom subsection (3) below applies a notice—

(a) stating particulars of the tax payable, the amount remaining unpaid and the date when it became payable;

(b) stating particulars of any interest payable on the tax, any amount remaining unpaid and the date when it became payable;

(c) requiring that person to pay the amount of the unpaid tax, or the aggregate amount of the unpaid tax and the unpaid interest, within 30 days of the service of the notice.

(3) This subsection applies to any person who, at any time within the relevant period, was a trustee of the settlement, except that it does not apply to any such person if—

(a) he ceased to be a trustee of the settlement before the end of the relevant period, and

(b) he shows that, when he ceased to be a trustee of the settlement, there was no proposal that the trustees might become neither resident nor ordinarily resident in the United Kingdom.

(4) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the migrating trustees.

(5) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(6) For the purposes of this section—

(a) where the relevant time (within the meaning of section 80) falls within the period of 12 months beginning with 19th March 1991, the relevant period is the period beginning with that date and ending with that time;

(b) in any other case, the relevant period is the period of 12 months ending with the relevant time.

83 Trustees ceasing to be liable to U.K. tax.

(1) This section applies if the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time ("the time concerned") trustees who fall to be regarded for the purposes of any double taxation relief arrangements—

(a) as resident in a territory outside the United Kingdom, and

(b) as not liable in the United Kingdom to tax on gains accruing on disposals of assets ("relevant assets") which constitute settled property of the settlement and fall within descriptions specified in the arrangements.

(2) The trustees shall be deemed for all purposes of this Act—

(a) to have disposed of their relevant assets immediately before the time concerned, and

(b) immediately to have reacquired them,

at their market value at that time.

84 Acquisition by dual resident trustees.

(1) Section 152 shall not apply where—

(a) the new assets are, or the interest in them is, acquired by the trustees of a settlement,

(b) at the time of the acquisition the trustees are resident and ordinarily resident in the United Kingdom and fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom,

(c) the assets are of a description specified in the arrangements, and

(d) were the trustees to dispose of the assets immediately after the acquisition, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(2) In this section "the new assets" has the same meaning as in section 152.

85 Disposal of interests in non-resident settlements.

(1) Subsection (1) of section 76 shall not apply to the disposal of an interest in settled property, other than one treated under subsection (2) of that section as made in consideration of obtaining the settled property, if at the time of the disposal the trustees are neither resident nor ordinarily resident in the United Kingdom.

(2) Subject to subsections (4) and (9) below, subsection (3) below applies where—

(a) section 80 applies as regards the trustees of a settlement,

(b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying, and

(c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time.

(3) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—

(a) disposed of it immediately before the relevant time, and

(b) immediately reacquired it,

at its market value at that time.

(4) Subsection (3) above shall not apply if section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell before the time when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it.

(5) Subsection (7) below applies where—

(a) section 80 applies as regards the trustees of a settlement,

(b) after the relevant time (within the meaning of that section) a person disposes of an interest created by or arising under the settlement and the circumstances are such that subsection (1) above prevents section 76(1) applying,

(c) the interest was created for his benefit, or he otherwise acquired it, before the relevant time, and

(d) section 83 applied as regards the trustees in circumstances where the time concerned (within the meaning of that section) fell in the relevant period.

(6) The relevant period is the period which—

(a) begins when the interest was created for the benefit of the person disposing of it or when he otherwise acquired it, and

(b) ends with the relevant time.

(7) For the purpose of calculating any chargeable gain accruing on the disposal of the interest, the person disposing of it shall be treated as having—

(a) disposed of it immediately before the time found under subsection (8) below, and

(b) immediately reacquired it,

at its market value at that time.

(8) The time is—

(a) the time concerned (where there is only one such time), or

(b) the earliest time concerned (where there is more than one because section 83 applied more than once).

(9) Subsection (3) above shall not apply where subsection (7) above applies.

86 Attribution of gains to settlors with interest in non-resident or dual resident settlements.

(1) This section applies where the following conditions are fulfilled as regards a settlement in a particular year of assessment—

(a) the settlement is a qualifying settlement in the year;

(b) the trustees of the settlement fulfil the condition as to residence specified in subsection (2) below;

(c) a person who is a settlor in relation to the settlement ("the settlor") is domiciled in the United Kingdom at some time in the year and is either resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year;

(d) at any time during the year the settlor has an interest in the settlement;

(e) by virtue of disposals of any of the settled property originating from the settlor, there is an amount on which the trustees would be chargeable to tax

for the year under section 2(2) if the assumption as to residence specified in subsection (3) below were made;

(f) paragraph 3, 4 or 5 of Schedule 5 does not prevent this section applying.

(2) The condition as to residence is that—

(a) the trustees are not resident or ordinarily resident in the United Kingdom during any part of the year, or

(b) the trustees are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, but at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(3) Where subsection (2)(a) above applies, the assumption as to residence is that the trustees are resident or ordinarily resident in the United Kingdom throughout the year; and where subsection (2)(b) above applies, the assumption as to residence is that the double taxation relief arrangements do not apply.

(4) Where this section applies—

(a) chargeable gains of an amount equal to that referred to in subsection (1)(e) above shall be treated as accruing to the settlor in the year, and

(b) those gains shall be treated as forming the highest part of the amount on which he is chargeable to capital gains tax for the year.

[F113(4A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of any amount that is treated under this section as an amount of chargeable gains accruing to the settlor, chargeable gains that are treated as accruing to the settlor under this section shall not be eligible for taper relief.**]**

(5) Schedule 5 (which contains provisions supplementary to this section) shall have effect.

Textual Amendments

F113 S. 86(4A) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 6(2)**

Modifications etc. (not altering text)

C59 S. 86 modified (with effect in accordance with Sch. 23 paras. 1(1), 2(1)(5)(6), 3(1)(4)(6) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 23 paras. 1(2)(3)**, **2(2)-(4)**, **3(2)(3)**

C60 S. 86(1)(e) modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 132(5)**

C61 S. 86(1)(e) modified (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 23 para. 4(1)**

[F114**86A Attribution of gains to settlor in section 10A cases.**

(1) Subsection (2) below applies in the case of a person who is a settlor in relation to any settlement ("the relevant settlement") where—

(a) by virtue of section 10A, amounts falling within section 86(1)(e) for any intervening year or years would (apart from this section) be treated as accruing to the settlor in the year of return; and

(b) there is an excess of the relevant chargeable amounts for the non-residence period over the amount of the section 87 pool at the end of the year of departure.

(2) Only so much (if any) of—

(a) the amount falling within section 86(1)(e) for the intervening year, or

(b) if there is more than one intervening year, the aggregate of the amounts falling within section 86(1)(e) for those years,

as exceeds the amount of the excess mentioned in subsection (1)(b) above shall fall in accordance with section 10A to be attributed to the settlor for the year of return.

(3) In subsection (1) above, the reference to the relevant chargeable amounts for the non-residence period is (subject to subsection (5) below) a reference to the aggregate of the amounts on which beneficiaries of the relevant settlement are charged to tax under section 87 or 89(2) for the intervening year or years in respect of any capital payments received by them.

(4) In subsection (1) above, the reference to the section 87 pool at the end of the year of departure is (subject to subsection (5) below) a reference to the amount (if any) which, in accordance with subsection (2) of that section, fell in relation to the relevant settlement to be carried forward from the year of departure to be included in the amount of the trust gains for the year of assessment immediately following the year of departure.

(5) Where the property comprised in the relevant settlement has at any time included property not originating from the settlor, only so much (if any) of any capital payment or amount carried forward in accordance with section 87(2) as, on a just and reasonable apportionment, is properly referable to property originating from the settlor shall be taken into account for the purposes of subsections (3) and (4) above.

(6) Where any reduction falls to be made by virtue of subsection (2) above in any amount to be attributed in accordance with section 10A to any settlor for any year of assessment, the reduction to be treated as made for that year in accordance with section 87(3) in the case of the settlement in question shall not be made until—

(a) the reduction (if any) falling to be made by virtue of that subsection has been made in the case of every settlor to whom any amount is so attributed; and

(b) effect has been given to any reduction required to be made under subsection (7) below.

(7) Where in the case of any settlement there is (after the making of any reduction or reductions in accordance with subsection (2) above) any amount or amounts falling in accordance with section 10A to be attributed for any year of assessment to settlors of the settlement, the amount or (as the case may be) aggregate amount falling in accordance with that section to be so attributed shall be applied in reducing the amount carried forward to that year in accordance with section 87(2).

(8) Where an amount or aggregate amount has been applied, in accordance with subsection (7) above, in reducing the amount which in the case of any settlement is carried forward to any year in accordance with section 87(2), that amount (or, as the case may be, so much of it as does not exceed the amount which it is applied in reducing) shall be deducted from the amount used for that year for making the reduction under section 87(3) in the case of that settlement.

(9) Expressions used in this section and section 10A have the same meanings in this section as in that section; and paragraph 8 of Schedule 5 shall apply for the construction of the references in subsection (5) above to property originating from the settlor as it applies for the purposes of that Schedule.**]**

Textual Amendments

F114 S. 86A inserted (with effect in accordance with s. 129(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 129(1)**

87 Attribution of gains to beneficiaries.

(1) This section applies to a settlement for any year of assessment during which the trustees are at no time resident or ordinarily resident in the United Kingdom [F115]... .

(2) There shall be computed in respect of every year of assessment for which this section applies the amount on which the trustees would have been chargeable to tax under section 2(2) if they had been resident or ordinarily resident in the United Kingdom in the year; and that amount, together with the corresponding amount in respect of any earlier such year so far as not already treated under subsection (4) below or section 89(2) as chargeable gains accruing to beneficiaries under the settlement, is in this section and sections 89 and 90 referred to as the trust gains for the year.

(3) Where as regards the same settlement and for the same year of assessment—

(a) chargeable gains, whether of one amount or of 2 or more amounts, are treated as accruing by virtue of section 86(4), and

(b) an amount falls to be computed under subsection (2) above,

the amount so computed shall be treated as reduced by the amount, or aggregate of the amounts, mentioned in paragraph (a) above.

(4) Subject to the following provisions of this section, the trust gains for a year of assessment shall be treated as chargeable gains accruing in that year to beneficiaries of the settlement who receive capital payments from the trustees in that year or have received such payments in any earlier year.

(5) The attribution of chargeable gains to beneficiaries under subsection (4) above shall be made in proportion to, but shall not exceed, the amounts of the capital payments received by them.

(6) A capital payment shall be left out of account for the purposes of subsections (4) and (5) above to the extent that chargeable gains have by reason of the payment been treated as accruing to the recipient in an earlier year.

[[F116](6A) Without prejudice to so much of this section as requires section 2A to be applied in the computation of the amount of the trust gains for any year of assessment, chargeable gains that are treated as accruing to beneficiaries under this section shall not be eligible for taper relief.**]**

(7) A beneficiary shall not be charged to tax on chargeable gains treated by virtue of subsection (4) above as accruing to him in any year unless he is domiciled in the United Kingdom at some time in that year.

(8) In computing an amount under subsection (2) above in respect of the year 1991-92 or a subsequent year of assessment, the effect of sections 77 to 79 shall be ignored.

(9) For the purposes of this section a settlement arising under a will or intestacy shall be treated as made by the testator or intestate at the time of his death.

(10) Subsection (1) above does not apply in relation to any year beginning before 6th April 1981; and the reference in subsections (4) and (5) to capital payments received by beneficiaries do not include references to any payment received before 10th March 1981 or any payment received on or after that date and before 6th April 1984 so far as it represents a chargeable gain which accrued to the trustees before 6th April 1981.

Textual Amendments

F115 Words in s. 87(1) repealed (with effect in accordance with s. 130(3) of the amending Act) by Finance Act 1998 (c. 36), s. 130(1), **Sch. 27 Pt. III(30)**

F116 S. 87(6A) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 6(3)**

Modifications etc. (not altering text)

C62 S. 87 modified (31.7.1998) by Finance Act 1998 (c. 36), **s. 130(4)**

C63 S. 87(2) modified (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 23 para. 5(1)**

C64 S. 87(3) modified (31.7.1998) by Finance Act 1998 (c. 36), Sch. 23 paras. 4(6), 5(2)

88 Gains of dual resident settlements.

(1) Section 87 also applies to a settlement for any year of assessment beginning on or after 6th April 1991 if—

(a) the trustees are resident in the United Kingdom during any part of the year or ordinarily resident in the United Kingdom during the year, **[**F117and**]**

(b) at any time of such residence or ordinary residence they fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, F118...

F118(c) . . . . . .

(2) In respect of every year of assessment for which section 87 applies by virtue of this section, section 87 shall have effect as if the amount to be computed under section 87(2) were the assumed chargeable amount; and the reference in section 87(2) to the corresponding amount in respect of an earlier year shall be construed as a reference to the amount computed under section 87(2) apart from this section or (as the case may be) the amount computed under section 87(2) by virtue of this section.

(3) For the purposes of subsection (2) above the assumed chargeable amount in respect of a year of assessment is the lesser of the following 2 amounts—

(a) the amount on which the trustees would be chargeable to tax for the year under section 2(2) on the assumption that the double taxation relief arrangements did not apply;

(b) the amount on which, by virtue of disposals of protected assets, the trustees would be chargeable to tax for the year under section 2(2) on the assumption that those arrangements did not apply.

(4) For the purposes of subsection (3)(b) above assets are protected assets if—

(a) they are of a description specified in the double taxation relief arrangements, and

(b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(5) For the purposes of subsection (4) above—

(a) the assumption specified in subsection (3)(b) above shall be ignored;

(b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;

(c) if different assets are identified by reference to different relevant times, all of them are protected assets.

(6) In computing the assumed chargeable amount in respect of a particular year of assessment, the effect of sections 77 to 79 shall be ignored.

(7) For the purposes of section 87 as it applies by virtue of this section, capital payments received before 6th April 1991 shall be disregarded.

Textual Amendments

F117 Word in s. 88(1)(a) inserted (with effect in accordance with s. 130(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 130(2)(a)**

F118 S. 88(1)(c) and preceding word repealed (with effect in accordance with s. 130(3) of the amending Act) by Finance Act 1998 (c. 36), s. 130(2)(b), **Sch. 27 Pt. III(30)**

89 Migrant settlements etc.

(1) Where a period of one or more years of assessment for which section 87 applies to a settlement ("a non-resident period") succeeds a period of one or more years of assessment for each of which section 87 does not apply to the settlement ("a resident period"), a capital payment received by a beneficiary in the resident period shall be disregarded for the purposes of section 87 if it was not made in anticipation of a disposal made by the trustees in the non-resident period.

(2) Where—

(a) a non-resident period is succeeded by a resident period, and

(b) the trust gains for the last year of the non-resident period are not (or not wholly) treated as chargeable gains accruing in that year to beneficiaries,

then, subject to subsection (3) below, those trust gains (or the outstanding part of them) shall be treated as chargeable gains accruing in the first year of the resident period to beneficiaries of the settlement who receive capital payments from the trustees in that year; and so on for the second and subsequent years until the amount treated as accruing to beneficiaries is equal to the amount of the trust gains for the last year of the non-resident period.

(3) Subsections (5)**[**F119, (6A)**]** and (7) of section 87 shall apply in relation to subsection (2) above as they apply in relation to subsection (4) of that section.

Textual Amendments

F119 Word in s. 89(3) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 6(4)**

90 Transfers between settlements.

(1) If in a year of assessment for which section 87 or 89(2) applies to a settlement ("the transferor settlement") the trustees transfer all or part of the settled property to the trustees of another settlement ("the transferee settlement") then, subject to the following provisions—

(a) if section 87 applies to the transferee settlement for the year, its trust gains for the year shall be treated as increased by an amount equal to the outstanding trust gains for the year of the transferor settlement or, where part only of the settled property is transferred, to a proportionate part of those trust gains;

(b) if subsection (2) of section 89 applies to the transferee settlement for the year (otherwise than by virtue of paragraph (c) below), the trust gains referred to in that subsection shall be treated as increased by the amount mentioned in paragraph (a) above;

(c) if (apart from this paragraph) neither section 87 nor section 89(2) applies to the transferee settlement for the year, subsection (2) of section 89 shall apply to it as if the year were the first year of a resident period succeeding a non-resident period and the trust gains referred to in that subsection were equal to the amount mentioned in paragraph (a) above.

(2) Subject to subsection (3) below, the reference in subsection (1)(a) above to the outstanding trust gains for the year of the transferor settlement is a reference to the amount of its trust gains for the year so far as they are not treated under section 87(4) as chargeable gains accruing to beneficiaries in that year.

(3) Where section 89(2) applies to the transferor settlement for the year, the reference in subsection (1)(a) above to the outstanding trust gains of the settlement is a reference to the trust gains referred to in section 89(2) so far as not treated as chargeable gains accruing to beneficiaries in that or an earlier year.

(4) This section shall not apply to a transfer so far as it is made for consideration in money or money's worth.

91 Increase in tax payable under section 87 or 89(2).

(1) This section applies where—

(a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,

(b) the payment is made in a year of assessment for which section 87 applies to the settlement or in circumstances where section 89(2) treats chargeable gains as accruing in respect of the payment,

(c) the whole payment is, in accordance with sections 92 to 95, matched with a qualifying amount of the settlement for a year of assessment falling at some time before that immediately preceding the one in which the payment is made, and

(d) a beneficiary is charged to tax in respect of the payment by virtue of section 87 or 89(2).

(2) The tax payable by the beneficiary in respect of the payment shall be increased by the amount found under subsection (3) below, except that it shall not be increased beyond the amount of the payment; and an assessment may charge tax accordingly.

(3) The amount is one equal to the interest that would be yielded if an amount equal to the tax which would be payable by the beneficiary in respect of the payment (apart from this section) carried interest for the chargeable period at the rate of 10 per cent. per annum.

(4) The chargeable period is the period which—

(a) begins with the later of the 2 days specified in subsection (5) below, and

(b) ends with 30th November in the year of assessment following that in which the capital payment is made.

(5) The 2 days are—

(a) 1st December in the year of assessment following that for which the qualifying amount mentioned in subsection (1)(c) above is the qualifying amount, and

(b) 1st December falling 6 years before 1st December in the year of assessment following that in which the capital payment is made.

(6) The Treasury may by order substitute for the percentage specified in subsection (3) above (whether as originally enacted or as amended at any time under this subsection) such other percentage as they think fit.

(7) An order under subsection (6) above may provide that an alteration of the percentage is to have effect for periods beginning on or after a day specified in the order in relation to interest running for chargeable periods beginning before that day (as well as interest running for chargeable periods beginning on or after that day).

(8) Sections 92 to 95 have effect for the purpose of supplementing subsections (1) to (5) above.

92 Qualifying amounts and matching.

(1) If section 87 applies to a settlement for the year 1992-93 or a subsequent year of assessment the settlement shall have a qualifying amount for the year, and the amount shall be the amount computed for the settlement in respect of the year concerned under section 87(2).

(2) The settlement shall continue to have the same qualifying amount (if any) for the [M15]year 1990-91 or 1991-92 as it had for that year by virtue of paragraph 2 of Schedule 17 to the Finance Act 1991 (subject to subsection (3) below).

(3) Where—

(a) capital payments are made by the trustees of a settlement on or after 6th April 1991, and

(b) the payments are made in a year or years of assessment for which section 87 applies to the settlement or in circumstances where section 89(2) treats chargeable gains as accruing in respect of the payments,

the payments shall be matched with qualifying amounts of the settlement for the year 1990-91 and subsequent years of assessment (so far as the amounts are not already matched with payments by virtue of this subsection).

(4) In applying subsection (3) above—

(a) earlier payments shall be matched with earlier amounts;

(b) payments shall be carried forward to be matched with future amounts (so far as not matched with past amounts);

(c) a payment which is less than an unmatched amount (or part) shall be matched to the extent of the payment;

(d) a payment which is more than an unmatched amount (or part) shall be matched, as to the excess, with other unmatched amounts.

(5) Where part only of a capital payment is taxable, the part which is not taxable shall not fall to be matched until taxable parts of other capital payments (if any) made in the same year of assessment have been matched; and subsections (3) and (4) above shall have effect accordingly.

(6) For the purposes of subsection (5) above a part of a capital payment is taxable if the part results in chargeable gains accruing under section 87 or 89(2).

Marginal Citations
M15 1991 c. 31.

93 Matching: special cases.

(1) Subsection (2) or (3) below applies (if the case permits) where—

(a) a capital payment is made by the trustees of a settlement on or after 6th April 1992,

(b) the payment is made in a year of assessment for which section 87 applies to the settlement or in circumstances where section 89(2) treats chargeable gains as accruing in respect of the payment, and

(c) a beneficiary is charged to tax in respect of the payment by virtue of section 87 or 89(2).

(2) If the whole payment is matched with qualifying amounts of the settlement for different years of assessment, each falling at some time before that immediately preceding the one in which the payment is made, then—

(a) the capital payment ("the main payment") shall be treated as being as many payments ("subsidiary payments") as there are qualifying amounts,

(b) a qualifying amount shall be attributed to each subsidiary payment and each payment shall be quantified accordingly, and

(c) the tax in respect of the main payment shall be divided up and attributed to the subsidiary payments on the basis of a just and reasonable apportionment,

and section 91 shall apply in the case of each subsidiary payment, the qualifying amount attributed to it and the tax attributed to it.

(3) If part of the payment is matched with a qualifying amount of the settlement for a year of assessment falling at some time before that immediately preceding the one in which the payment is made, or with qualifying amounts of the settlement for different years of assessment each so falling, then—

(a) only tax in respect of so much of the payment as is so matched shall be taken into account, and references below to the tax shall be construed accordingly,

(b) the capital payment shall be divided into 2, the first part representing so much as is matched as mentioned above and the second so much as is not,

(c) the second part shall be ignored, and

(d) the first part shall be treated as a capital payment, the whole of which is matched with the qualifying amount or amounts mentioned above, and the whole of which is charged to the tax,

and section 91, or that section and subsections (1) and (2) above (as the case may be), shall apply in the case of the capital payment arrived at under this subsection, the qualifying amount or amounts, and the tax.

(4) Section 91 and subsections (1) to (3) above shall apply (with appropriate modifications) where a payment or part of a payment is to any extent matched with part of an amount.

94 Transfers of settled property where qualifying amounts not wholly matched.

(1) This section applies if—

(a) in the year 1990-91 or a subsequent year of assessment the trustees of a settlement ("the transferor settlement") transfer all or part of the settled property to the trustees of another settlement ("the transferee settlement"), and

(b) looking at the state of affairs at the end of the year of assessment in which the transfer is made, there is a qualifying amount of the transferor settlement for a particular year of assessment ("the year concerned") and the amount is not (or not wholly) matched with capital payments.

(2) If the whole of the settled property is transferred—

(a) the transferor settlement's qualifying amount for the year concerned shall be treated as reduced by so much of it as is not matched, and

(b) so much of that amount as is not matched shall be treated as (or as an addition to) the transferee settlement's qualifying amount for the year concerned.

(3) If part of the settled property is transferred—

(a) so much of the transferor settlement's qualifying amount for the year concerned as is not matched shall be apportioned on such basis as is just and reasonable, part being attributed to the transferred property and part to the property not transferred,

(b) the transferor settlement's qualifying amount for the year concerned shall be treated as reduced by the part attributed to the transferred property, and

(c) that part shall be treated as (or as an addition to) the transferee settlement's qualifying amount for the year concerned.

(4) If the transferee settlement did not in fact exist in the year concerned, it shall be treated as having been made at the beginning of that year.

(5) If the transferee settlement did in fact exist in the year concerned, this section shall apply whether or not section 87 applies to the settlement for that year or for any year of assessment falling before that year.

95 Matching after transfer.

(1) This section applies as regards the transferee settlement in a case where section 94 applies.

(2) Matching shall be made under section 92 by reference to the state of affairs existing immediately before the beginning of the year of assessment in which the transfer is made, and the transfer shall not affect matching so made.

(3) Subject to subsection (2) above, payments shall be matched with amounts in accordance with section 92 and by reference to amounts arrived at under section 94.

96 Payments by and to companies.

(1) Where a capital payment is received from a qualifying company which is controlled by the trustees of a settlement at the time it is received, for the purposes of sections 87 to 90 it shall be treated as received from the trustees.

(2) Where a capital payment is received from the trustees of a settlement (or treated as so received by virtue of subsection (1) above) and it is received by a non-resident qualifying company, the rules in subsections (3) to (6) below shall apply for the purposes of sections 87 to 90.

(3) If the company is controlled by one person alone at the time the payment is received, and that person is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person.

(4) If the company is controlled by 2 or more persons (taking each one separately) at the time the payment is received, then—

(a) if one of them is then resident or ordinarily resident in the United Kingdom, it shall be treated as a capital payment received by that person;

(b) if 2 or more of them are then resident or ordinarily resident in the United Kingdom ("the residents") it shall be treated as being as many equal capital payments as there are residents and each of them shall be treated as receiving one of the payments.

(5) If the company is controlled by 2 or more persons (taking them together) at the time the payment is received and each of them is then resident or ordinarily resident in the United Kingdom—

(a) it shall be treated as being as many capital payments as there are participators in the company at the time it is received, and

(b) each such participator (whatever his residence or ordinary residence) shall be treated as receiving one of the payments, quantified on the basis of a just and reasonable apportionment,

but where (by virtue of the preceding provisions of this subsection and apart from this provision) a participator would be treated as receiving less than one-twentieth of the payment actually received by the company, he shall not be treated as receiving anything by virtue of this subsection.

(6) For the purposes of subsection (1) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.

(7) For the purposes of subsection (1) above a company is controlled by the trustees of a settlement if it is controlled by the trustees alone or by the trustees together with a person who (or persons each of whom) falls within subsection (8) below.

(8) A person falls within this subsection if—

(a) he is a settlor in relation to the settlement, or

(b) he is connected with a person falling within paragraph (a) above.

(9) For the purposes of subsection (2) above a non-resident qualifying company is a company which is not resident in the United Kingdom and would be a close company if it were so resident.

[F120(9A) For the purposes of this section an individual shall be deemed to have been resident in the United Kingdom at any time in any year of assessment which in his case is an intervening year for the purposes of section 10A.

(9B) If—

(a) it appears after the end of any year of assessment that any individual is to be treated by virtue of subsection (9A) above as having been resident in the United Kingdom at any time in that year, and

(b) as a consequence, any adjustments fall to be made to the amounts of tax taken to have been chargeable by virtue of this section on any person,

nothing in any enactment limiting the time for the making of any claim or assessment shall prevent the making of those adjustments (whether by means of an assessment, an amendment of an assessment, a repayment of tax or otherwise).**]**

(10) For the purposes of this section—

(a) the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act, but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company;

(b) "participator" has the meaning given by section 417(1) of the Taxes Act.

(11) This section shall apply to payments received on or after 19th March 1991.

Textual Amendments

F120 S. 96(9A)(9B) inserted (with effect in accordance with s. 127(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 127(3)**

97 Supplementary provisions.

(1) In **[**F121sections 86A**]** to 96 and this section "capital payment"—

(a) means any payment which is not chargeable to income tax on the recipient or, in the case of a recipient who is neither resident nor ordinarily resident in the United Kingdom, any payment received otherwise than as income, but

(b) does not include a payment under a transaction entered into at arm's length if it is received on or after 19th March 1991.

(2) In subsection (1) above references to a payment include references to the transfer of an asset and the conferring of any other benefit, and to any occasion on which settled property becomes property to which section 60 applies.

(3) The fact that the whole or part of a benefit is by virtue of section 740(2)(b) of the Taxes Act treated as the recipient's income for a year of assessment after that in which it is received—

(a) shall not prevent the benefit or that part of it being treated for the purposes of **[**F121sections 86A**]** to 96 as a capital payment in relation to any year of assessment earlier than that in which it is treated as his income; but

(b) shall preclude its being treated for those purposes as a capital payment in relation to that or any later year of assessment.

(4) For the purposes of **[**F121sections 86A**]** to 96 the amount of a capital payment made by way of loan, and of any other capital payment which is not an outright payment of money, shall be taken to be equal to the value of the benefit conferred by it.

(5) For the purposes of **[**F121sections 86A**]** to 90 a capital payment shall be regarded as received by a beneficiary from the trustees of a settlement if—

(a) he receives it from them directly or indirectly, or

(b) it is directly or indirectly applied by them in payment of any debt of his or is otherwise paid or applied for his benefit, or

(c) it is received by a third person at the beneficiary's direction.

(6) Section 16(3) shall not prevent losses accruing to trustees in a year of assessment for which section 87 of this Act or section 17 of the 1979 Act applied to the settlement from being allowed as a deduction from chargeable gains accruing in any later year (so far as they have not previously been set against gains for the purposes of a computation under either of those sections or otherwise).

(7) In **[**F122sections 86A**]** to 96 and in the preceding provisions of this section—

"settlement" and "settlor" have the meaning given by **[**F123section 660G(1) and (2)**]** of the Taxes Act and "settlor" includes, in the case of a settlement arising under a will or intestacy, the testator or intestate, and

"settled property" shall be construed accordingly.

(8) In a case where—

(a) at any time on or after 19th March 1991 a capital payment is received from the trustees of a settlement or is treated as so received by virtue of section 96(1),

(b) it is received by a person, or treated as received by a person by virtue of section 96(2) to (5),

(c) at the time it is received or treated as received, the person is not (apart from this subsection) a beneficiary of the settlement, and

(d) subsection (9) or (10) below does not prevent this subsection applying,

for the purposes of **[**F122sections 86A**]** to 90 the person shall be treated as a beneficiary of the settlement as regards events occurring at or after that time.

(9) Subsection (8) above shall not apply where a payment mentioned in paragraph (a) is made in circumstances where it is treated (otherwise than by subsection (8) above) as received by a beneficiary.

(10) Subsection (8) above shall not apply so as to treat—

(a) the trustees of the settlement referred to in that subsection, or

(b) the trustees of any other settlement,

as beneficiaries of the settlement referred to in that subsection.

Textual Amendments

F121 Words in s. 97(1)-(5) substituted (with effect in accordance with s. 129(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 129(2)**

F122 Words in s. 97(7)(8) substituted (with effect in accordance with s. 129(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 129(2)**

F123 Words in s. 97(7) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 30**

98 Power to obtain information for purposes of sections 87 to 90.

(1) The Board may by notice require any person to furnish them within such time as they may direct, not being less than 28 days, with such particulars as they think necessary for the purposes of sections 87 to 90.

(2) Subsections (2) to (5) of section 745 of the Taxes Act shall have effect in relation to subsection (1) above as they have effect in relation to section 745(1), but in their application by virtue of this subsection—

(a) references to Chapter III of Part XVII of the Taxes Act shall be construed as references to sections 87 to 90; and

(b) the expressions "settlement" and "settlor" have the same meanings as in those sections.

[F124 98A Settlements with foreign element: information.

Schedule 5A to this Act (which contains general provisions about information relating to settlements with a foreign element) shall have effect.]

Textual Amendments

F124 S. 98A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 97(2)**

CHAPTER III

COLLECTIVE INVESTMENT SCHEMES AND INVESTMENT TRUSTS

99 Application of Act to unit trust schemes.

(1) This Act shall apply in relation to any unit trust scheme as if—

(a) the scheme were a company,

(b) the rights of the unit holders were shares in the company, and

(c) in the case of an authorised unit trust, the company were resident and ordinarily resident in the United Kingdom,

except that nothing in this section shall be taken to bring a unit trust scheme within the charge to corporation tax on chargeable gains.

(2) Subject to subsection (3) below, in this Act—

(a) "unit trust scheme" has the same meaning as in the M16Financial Services Act 1986,

(b) "authorised unit trust" has the meaning given by section 468(6) of the Taxes Act,

[F125(c) "open-ended investment company" has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (11) to (18) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly references

in subsections (11) to (16) of that section to "the Tax Acts" shall be construed as if they included references to this Act.**]**

(3) The Treasury may by regulations provide that any scheme of a description specified in the regulations shall be treated as not being a unit trust scheme for the purposes of this Act; and regulations under this section may contain such supplementary and transitional provisions as appear to the Treasury to be necessary or expedient.

Textual Amendments

F125 S. 99(2)(c) added (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), regs. 1(1), **20**

Modifications etc. (not altering text)

C65 S. 99 extended (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 22(2)**

Marginal Citations

M16 1986 c. 60.

100 Exemption for authorised unit trusts etc.

(1) Gains accruing to an authorised unit trust, an investment trust **[**F126a venture capital trust**]** or a court investment fund shall not be chargeable gains.

(2) If throughout a year of assessment all the issued units in a unit trust scheme (other than an authorised unit trust) are assets such that any gain accruing if they were disposed of by the unit holder would be wholly exempt from capital gains tax or corporation tax (otherwise than by reason of residence) gains accruing to the unit trust scheme in that year of assessment shall not be chargeable gains.

(3) In this Act "court investment fund" means a fund established under section 42 of the M17Administration of Justice Act 1982.

Textual Amendments

F126 Words in s. 100(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 72(2)**

Marginal Citations

M17 1982 c. 53.

101 Transfer of company's assets to investment trust.

(1) Where section 139 has applied on the transfer of a company's business (in whole or in part) to a company which at the time of the transfer was not an investment trust, then if—

(a) at any time after the transfer the company becomes for an accounting period an investment trust, and

(b) at the beginning of that accounting period the company still owns any of the assets of the business transferred,

the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.

[F127(1A) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the end of the last accounting period to end before the beginning of the accounting period mentioned in that subsection.**]**

[F128(1B) This section does not apply if at the time at which the company becomes an investment trust there has been an event by virtue of which it falls by virtue of section 101B(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.**]**

(2) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of subsection (1) above may be made at any time within 6 years after the end of the accounting period referred to in subsection (1) above, and where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

Textual Amendments

F127 S. 101(1A) inserted (29.4.1996 with effect as specified in s. 140(2) of the amending Act) by Finance Act 1996 (c. 8), **s. 140(1)**

F128 S. 101(1B) inserted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 134(3)**

[F129**101A Transfer within group to investment trust.**

(1) This section applies where—

(a) an asset has been disposed of to a company (the "acquiring company") and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,

(b) at the time of the disposal the acquiring company was not an investment trust, and

(c) the conditions set out in subsection (2) below are satisfied by the acquiring company.

(2) Those conditions are satisfied by the acquiring company if—

(a) it becomes an investment trust for an accounting period beginning not more than 6 years after the time of the disposal,

(b) at the beginning of that accounting period, it owns, otherwise than as trading stock—

(i) the asset, or

(ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

(c) it has not been an investment trust for any earlier accounting period beginning after the time of the disposal, and

(d) at the time at which it becomes an investment trust, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101C(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.

(3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the end of the last accounting period to end before the beginning of the accounting period for which the acquiring company becomes an investment trust.

(5) For the purposes of this section a chargeable gain is carried forward from an asset to other property on a replacement of business assets if—

(a) by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and

(b) as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.

(6) For the purposes of this section an asset acquired by the acquiring company shall be treated as the same as an asset owned by it at a later time if the value of the second asset is derived in whole or in part from the first asset; and, in particular, assets shall be so treated where—

(a) the second asset is a freehold and the first asset was a leasehold; and

(b) the lessee has acquired the reversion.

(7) Where under this section a company is to be treated as having disposed of and reacquired an asset—

(a) all such recomputations of liability in respect of other disposals, and

(b) all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax,

as may be required in consequence of the provisions of this section shall be carried out.

(8) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years after the end of the accounting period referred to in subsection (2)(a) above.**]**

Textual Amendments

F129 S. 101A inserted (with application in accordance with s. 133(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 133(1)**

[F130 101B Transfer of company's assets to venture capital trust.

(1) Where section 139 has applied on the transfer of a company's business (in whole or in part) to a company which at the time of the transfer was not a venture capital trust, then if—

(a) at any time after the transfer the company becomes a venture capital trust by virtue of an approval for the purposes of section 842AA of the Taxes Act; and

(b) at the time as from which the approval has effect the company still owns any of the assets of the business transferred,

the company shall be treated for all the purposes of this Act as if immediately after the transfer it had sold, and immediately reacquired, the assets referred to in paragraph (b) above at their market value at that time.

(2) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the company on the sale referred to in subsection (1) above shall be treated as accruing to the company immediately before the time mentioned in subsection (1)(b) above.

(3) This section does not apply if at the time mentioned in subsection (1)(b) above there has been an event by virtue of which the company falls by virtue of section 101(1) to be treated as having sold, and immediately reacquired, the assets immediately after the transfer referred to in subsection (1) above.

(4) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the approval mentioned in subsection (1)(a) above has effect as from the beginning of an accounting period, be made at any time within 6 years after the end of that accounting period.

(5) Where under this section a company is to be treated as having disposed of, and reacquired, an asset of a business, all such recomputations of liability in respect of other disposals and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.**]**

Textual Amendments

F130 S. 101B inserted (with application in accordance with s. 134(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 134(2)**

[F131 101C Transfer within group to venture capital trust.

(1) This section applies where—

(a) an asset has been disposed of to a company (the "acquiring company") and the disposal has been treated by virtue of section 171(1) as giving rise to neither a gain nor a loss,

(b) at the time of the disposal the acquiring company was not a venture capital trust, and

(c) the conditions set out in subsection (2) below are satisfied by the acquiring company.

(2) Those conditions are satisfied by the acquiring company if—

(a) it becomes a venture capital trust by virtue of an approval having effect as from a time (the "time of approval") not more than 6 years after the time of the disposal,

(b) at the time of approval the company owns, otherwise than as trading stock—

(i) the asset, or

(ii) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

(c) it has not been a venture capital trust at any earlier time since the time of the disposal, and

(d) at the time of approval, there has not been an event by virtue of which it falls by virtue of section 179(3) or 101A(3) to be treated as having sold, and immediately reacquired, the asset at the time specified in subsection (3) below.

(3) The acquiring company shall be treated for all the purposes of this Act as if immediately after the disposal it had sold, and immediately reacquired, the asset at its market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the acquiring company on the sale referred to in subsection (3) above shall be treated as accruing to it immediately before the time of approval.

(5) Subsections (5) to (7) of section 101A apply for the purposes of this section as they apply for the purposes of that section.

(6) Notwithstanding any limitation on the time for making assessments, any assessment to corporation tax chargeable in consequence of this section may, in a case in which the time of approval is the time at which an accounting period of the company begins, be made at any time within 6 years after the end of that accounting period.

(7) Any reference in this section to an approval is a reference to an approval for the purposes of section 842AA of the Taxes Act.**]**

Textual Amendments

F131 S. 101C inserted (with application in accordance with s. 135(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 135(2)**

102 Collective investment schemes with property divided into separate parts.

(1) Subsection (2) below applies in the case of arrangements which constitute a collective investment scheme and under which—

(a) the contributions of the participants, and the profits or income out of which payments are to be made to them, are pooled in relation to separate parts of the property in question, and

(b) the participants are entitled to exchange rights in one part for rights in another.

(2) If a participant exchanges rights in one such part for rights in another, section 127 shall not prevent the exchange constituting a disposal and acquisition for the purposes of this Act.

(3) The reference in subsection (2) above to section 127—

(a) includes a reference to that section as applied by section 132, but

(b) does not include a reference to section 127 as applied by section 135;

and in this section "participant" shall be construed in accordance with the [M18]Financial Services Act 1986.

Marginal Citations

M18 1986 c. 60.

[F132]103 Restriction on availability of indexation allowance.

. . . . . .

Textual Amendments

F132 S. 103 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

PART IV

SHARES, SECURITIES, OPTIONS ETC.

CHAPTER I

GENERAL

Share pooling, identification of securities, and indexation

104 Share pooling: general interpretative provisions.

(1) Any number of securities of the same class acquired by the same person in the same capacity shall for the purposes of this Act be regarded as indistinguishable parts of a single asset growing or diminishing on the occasions on which additional securities of the same class are acquired or some of the securities of that class are disposed of.

(2) Subsection (1) above—

(a) does not apply to any securities which were acquired before 6th April 1982 or in the case of a company 1st April 1982;

[[F133](aa) does not apply, except for the purposes of corporation tax, to any securities acquired on or after 6th April 1998;**]** and

(b) has effect subject to sections 105, 106 and 107.

[[F134](2A) Subsection (2)(aa) above shall not prevent the application of subsection (1) above to any securities that would be treated as acquired on or after 6th April 1998 but for their falling by virtue of section 127 to be treated as the same as securities acquired before that date.**]**

(3) For the purposes of this section and sections 105, 107, 110**[**[F135], 110A**]** and 114—

[[F136]"a section 104 holding" is**]** a holding of securities which, by virtue of subsection (1) above, is to be regarded as a single asset;

"securities" does not include relevant securities as defined in section 108 but, subject to that, means—

(i) shares or securities of a company; and

(ii) any other assets where they are of a nature to be dealt in without identifying the particular assets disposed of or acquired; and

"relevant allowable expenditure" has the meaning assigned to it by section 53(2)(b) and (3);

but shares or securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

[F137(4) For the purposes of this Chapter securities of a company which are held—

(a) by a person who acquired them as an employee of the company or of any other person, and

(b) on terms which for the time being restrict his right to dispose of them,

shall (notwithstanding that they would otherwise fall to be treated as of the same class) be treated as of a different class from any securities acquired by him otherwise than as an employee of the company or of any other person and also from any shares that are not held subject to restrictions, or the same restrictions, on disposal or in the case of which the restrictions are no longer in force.**]**

(5) Nothing in this section or sections 110**[**F138, 110A**]** and 114 shall be taken as affecting the manner in which the market value of any securities is to be ascertained.

(6) Without prejudice to the generality of subsections (1) and (2) above, a disposal of securities in a **[**F139section 104 holding**]**, other than a disposal of the whole of it, is a disposal of part of an asset and the provisions of this Act relating to the computation of a gain accruing on a disposal of part of an asset shall apply accordingly.

Textual Amendments

F133 S. 104(2)(aa) inserted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(1)**

F134 S. 104(2A) inserted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(2)**

F135 Word in s. 104(3) inserted (with effect in accordance with s. 125(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 125(3)**

F136 Words in s. 104(3) substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(3)**

F137 S. 104(4) substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(4)**

F138 Word in s. 104(5) inserted (with effect in accordance with s. 125(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 125(3)**

F139 Words in s. 104(6) substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(5)(b)**

Modifications etc. (not altering text)

C66 S. 104 applied (with modifications) by S.I. 1989/469, **reg. 27(2)** (as inserted by S.I. 1996/846, **reg. 11(b)**)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

C69 S. 104(1) restricted (31.7.1998) by Finance Act 1998 (c. 36), **s. 124(8)(c)**

105 Disposal on or before day of acquisition of shares and other unidentified assets.

(1) **[**F140Paragraphs (a) and (b) below**]** shall apply where securities of the same class are acquired or disposed of by the same person on the same day and in the same capacity—

(a) all the securities so acquired shall be treated as acquired by a single transaction and all the securities so disposed of shall be treated as disposed of by a single transaction, and

(b) all the securities so acquired shall, so far as their quantity does not exceed that of the securities so disposed of, be identified with those securities.

[F141(2) Where the quantity of securities disposed of by any person exceeds the aggregate quantity of—

(a) the securities (if any) which are required by subsection (1) above to be identified with securities acquired on the day of the disposal,

(b) the securities (if any) which are required by any of the provisions of section 106 or 106A(5) to be identified with securities acquired after the day of the disposal, and

(c) the securities (if any) which are required by any of the provisions of sections 104, 106, 106A or 107, or of Schedule 2, to be identified with securities acquired before the day of the disposal,

the disposal shall be treated as diminishing a quantity of securities subsequently acquired, and as so diminishing any quantity so acquired at an earlier date, rather than one so acquired at a later date.**]**

Textual Amendments

F140 Words in s. 105(1) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(2)**

F141 S. 105(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(2)**

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

106 Disposal of shares and securities by company within prescribed period of acquisition.

(1) For the purposes of corporation tax on chargeable gains, shares disposed of by a company shall be identified in accordance with the following provisions where—

(a) the number of shares of that class held by the company at any time during the prescribed period before the disposal amounted to not less than 2 per cent. of the number of issued shares of that class; and

(b) shares of that class have been or are acquired by the company within the prescribed period before or after the disposal.

(2) Where a company is a member of a group, shares held or acquired by another member of the group shall be treated for the purposes of paragraphs (a) and (b) of subsection (1)

above as held or acquired by that company and for the purposes of paragraph (b) any shares acquired by that company from another company which was a member of the group throughout the prescribed period before and after the disposal shall be disregarded.

(3) References in subsection (1) above to a company's disposing, holding and acquiring shares are references to its doing so in the same capacity; and references in that subsection to the holding or acquisition of shares do not include references to the holding or acquisition of shares as trading stock.

(4) The shares disposed of shall be identified—

(a) with shares acquired as mentioned in subsection (1)(b) above ("available shares") rather than other shares; and

(b) with available shares acquired by the company making the disposal rather than other available shares.

(5) The shares disposed of shall be identified with available shares acquired before the disposal rather than available shares acquired after the disposal and—

(a) in the case of available shares acquired before the disposal, with those acquired later rather than those acquired earlier;

(b) in the case of available shares acquired after the disposal, with those acquired earlier rather than those acquired later.

(6) Where available shares could be identified—

(a) with shares disposed of either by the company that acquired them or by another company; or

(b) with shares disposed of either at an earlier date or at a later date,

they shall in each case be identified with the former rather than the latter; and the identification of any available shares with shares disposed of by a company on any occasion shall preclude their identification with shares comprised in a later disposal by that company or in a disposal by another company.

(7) Where a company disposes of shares which have been identified with shares disposed of by another company, the shares disposed of by the first-mentioned company shall be identified with the shares that would, apart from this section, have been comprised in the disposal by the other company or, if those shares have themselves been identified with shares disposed of by a third company, with the shares that would, apart from this section, have been comprised in the disposal by the third company and so on.

(8) Where shares disposed of by one company are identified with shares acquired by another, the sums allowable to the company making the disposal under section 38 shall be—

(a) the sums allowable under subsection (1)(c) of that section; and

(b) the sums that would have been allowable under subsection (1)(a) and (b) of that section to the company that acquired the shares if they have been disposed of by that company.

(9) This section shall have effect subject to section 105(1).

(10) In this section—

"group" has the meaning given in section 170(2) to (14);

"the prescribed period" means—

(a) in the case of a disposal through a stock exchange or Automated Real-Time Investments Exchange Limited, one month;

(b) in any other case, 6 months.

(11) Shares shall not be treated for the purpose of this section as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange.

(12) This section applies to securities as defined in section 132 as it applies to shares.

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

[F142 106A Identification of securities: general rules for capital gains tax.

(1) This section has effect for the purposes of capital gains tax (but not corporation tax) where any securities are disposed of by any person.

(2) The securities disposed of shall be identified in accordance with the following provisions of this section with securities of the same class that have been acquired by the person making the disposal.

(3) The provisions of this section have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—

(a) by the disposal, or

(b) by a transfer or delivery giving effect to it;

but where a person disposes of securities in one capacity, they shall not be identified under those provisions with any securities which he holds, or can dispose of, only in some other capacity.

(4) Securities disposed of on an earlier date shall be identified before securities disposed of on a later date; and, accordingly, securities disposed of by a later disposal shall not be identified with securities already identified as disposed of by an earlier disposal.

(5) Subject to subsection (4) above, if within the period of thirty days after the disposal the person making it acquires securities of the same class, the securities disposed of shall be identified—

(a) with securities acquired by him within that period, rather than with other securities; and

(b) with securities acquired at an earlier time within that period, rather than with securities acquired at a later time within that period.

(6) Subject to subsections (4) and (5) above, securities disposed of shall be identified with securities acquired at a later time, rather than with securities acquired at an earlier time.

(7) Subsection (6) above shall not require securities to be identified with particular securities comprised in a section 104 holding or a 1982 holding.

(8) Accordingly, that subsection shall have effect for determining whether, and to what extent, any securities should be identified with the whole or any part of a section 104 holding or a 1982 holding—

(a) as if the time of the acquisition of a section 104 holding were the time when it first came into being; and

(b) as if 31st March 1982 were the time of the acquisition of a 1982 holding.

(9) The identification rules set out in the preceding provisions of this section have effect subject to subsection (1) of section 105, and securities disposed of shall not be identified with securities acquired after the disposal except in accordance with that section or subsection (5) above.

(10) In this section—

"1982 holding" has the same meaning as in section 109;

"securities" means any securities within the meaning of section 104 or any relevant securities within the meaning of section 108.

(11) For the purposes of this section securities of a company shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange, or would be so treated if dealt with on that recognised stock exchange.**]**

Textual Amendments

F142 S. 106A inserted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(1)** (with s. 124(8))

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

C70 S. 106A modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(3)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C71 S. 106A modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(3)**

107 Identification of securities etc: general rules.

[F143(1) This section has effect for the purposes of corporation tax where any securities are disposed of by a company.

(1A) The securities disposed of shall be identified in accordance with the following provisions of this section with securities of the same class that have been acquired by the company making the disposal and could be comprised in that disposal.

(2) The provisions of this section have effect in the case of any disposal notwithstanding that some or all of the securities disposed of are otherwise identified—

(a) by the disposal, or

(b) by a transfer or delivery giving effect to it;

but where a company disposes of securities in one capacity, they shall not be identified with securities which it holds, or can dispose of, only in some other capacity.**]**

(3) Without prejudice to section 105 if, within a period of 10 days, a number of securities are acquired and subsequently a number of securities are disposed of and, apart from this subsection—

(a) the securities acquired would increase the size of, or constitute a **[**[F144]section 104 holding**]**, and

(b) the securities disposed of would decrease the size of, or extinguish, the same **[**[F144]section 104 holding**]**,

then, subject to subsections (4) and (5) below, the securities disposed of shall be identified with the securities acquired and none of them shall be regarded as forming part of an existing **[**[F144]section 104 holding**]** or constituting a **[**[F144]section 104 holding**]**.

(4) If, in a case falling within subsection (3) above, the number of securities acquired exceeds the number disposed of—

(a) the excess shall be regarded as forming part of an existing **[**[F144]section 104 holding**]** or, as the case may be, as constituting a **[**[F144]section 104 holding**]**; and

(b) if the securities acquired were acquired at different times (within the 10 days referred to in subsection (3) above) the securities disposed of shall be identified with securities acquired at an earlier time rather than with securities acquired at a later time.

(5) If, in a case falling within subsection (3) above, the number of securities disposed of exceeds the number acquired, the excess shall not be identified in accordance with that subsection.

(6) Securities which, by virtue of subsection (3) above, do not form part of or constitute a **[**[F144]section 104 holding**]** shall be treated for the purposes of section 54(2) as relevant securities within the meaning of section 108.

(7) The identification rules set out in subsections (8) and (9) below have effect subject to section 105 but, subject to that, have priority according to the order in which they are so set out.

(8) Securities disposed of shall be identified with securities forming part of a **[**[F144]section 104 holding**]** rather than with other securities.

(9) Securities disposed of shall be identified with securities forming part of a 1982 holding, within the meaning of section 109, rather than with other securities and, subject to that, shall be identified with securities acquired at a later time rather than with securities acquired at an earlier time.

Textual Amendments

F143 S. 107(1)(1A)(2) substituted for s. 107(1)(2) (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(3)**

F144 Words in s. 107 substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(5)(b)**

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

C72 S. 107 modified by S.I. 1989/469, **reg. 27A(2A)** (as inserted (6.4.1996) by S.I. 1996/846, **reg. 11(b)**)

108 Identification of relevant securities.

[F145(A1) This section has effect for the purposes of corporation tax where any relevant securities are disposed of by a company.**]**

(1) In this section "relevant securities" means—

(a) securities, within the meaning of section 710 of the Taxes Act;

[F146(aa) qualifying corporate bonds;**]**

F147(b) . . . . . ; and

(c) securities which are, or have at any time been, material interests in a non-qualifying offshore fund, within the meaning of Chapter V of Part XVII of that Act;

and shares or securities of a company shall not be treated for the purposes of this section as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

(2) Where a **[**F148company**]** disposes of relevant securities, the securities disposed of shall be identified in accordance with the rules contained in this section with the securities of the same class acquired by **[**F149the company**]** which could be comprised in that disposal, and shall be so identified notwithstanding that they are otherwise identified by the disposal or by a transfer or delivery giving effect to it (but so that where a **[**F148company**]** disposes of securities in one capacity, they shall not be identified with securities which **[**F149it**]** holds or can dispose of only in some other capacity).

(3) Relevant securities disposed of on an earlier date shall be identified before securities disposed of on a later date, and the identification of the securities first disposed of shall accordingly determine the securities which could be comprised in the later disposal.

(4) Relevant securities disposed of for transfer or delivery on a particular date or in a particular period—

(a) shall not be identified with securities acquired for transfer or delivery on a later date or in a later period; and

(b) shall be identified with securities acquired for transfer or delivery on or before that date or in or before that period, but on or after the date of the disposal, rather than with securities not so acquired.

(5) The relevant securities disposed of shall be identified—

(a) with securities acquired within the 12 months preceding the disposal rather than with securities not so acquired, and with securities so acquired on an earlier date rather than with securities so acquired on a later date, and

(b) subject to paragraph (a) above, with securities acquired on a later date rather than with securities acquired on an earlier date; and

(c) with securities acquired at different times on any one day in as nearly as may be equal proportions.

(6) The rules contained in the preceding subsections shall have priority according to the order in which they are so contained.

(7) Notwithstanding anything in subsections (3) to (5) above, where, under arrangements designed to postpone the transfer or delivery of relevant securities disposed of, a **[**[F150]company**]** by a single bargain acquires securities for transfer or delivery on a particular date or in a particular period and disposes of them for transfer or delivery on a later date or in a later period, then—

(a) the securities disposed of by that bargain shall be identified with the securities thereby acquired; and

(b) securities previously disposed of which, but for the operation of paragraph (a) above in relation to acquisitions for transfer or delivery on the earlier date or in the earlier period, would have been identified with the securities acquired by that bargain—

(i) shall, subject to subsection (3) above, be identified with any available securities acquired for such transfer or delivery (that is to say, any securities so acquired other than securities to which paragraph (a) above applies and other than securities with which securities disposed of for such transfer or delivery would be identified apart from this subsection); and

(ii) in so far as they cannot be so identified shall be treated as disposed of for transfer or delivery on the later date, or in the later period, mentioned above.

(8) This section shall have effect subject to section 106 but shall not apply—

(a) where the disposal is of quoted securities (within the meaning of paragraph 8 of Schedule 2), unless an election has been made with respect to the securities under paragraph 4 of that Schedule or under section 109(4), or

(b) where the disposal is of securities as respects which paragraph 17 or 18 of Schedule 2 has effect.

Textual Amendments

F145 S. 108(A1) inserted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(4)**

F146 S. 108(1)(aa) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 59** (with Sch. 15)

F147 S. 108(1)(b) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F148 Word in s. 108(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(5)(a)**

F149 Words in s. 108(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(5)(b)**

F150 Word in s. 108(7) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(5)(a)**

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

109 Pre-April 1982 share pools.

(1) This section has effect in relation to any 1982 holding, and in this section "1982 holding" means a holding which, immediately before the coming into force of this section, was a 1982 holding for the purposes of Part II of Schedule 19 to the [M19]Finance Act 1985.

(2) Subject to subsections (3) to (5) below—

(a) the holding shall continue to be regarded as a single asset for the purposes of this Act, but one which cannot grow by the acquisition of additional securities of the same class, and

(b) every sum, which on a disposal of the holding, would be an item of relevant allowable expenditure shall be regarded for the purposes of section 54 as having been incurred at such a time that the month which determines RI in the formula in subsection (1) of that section is March 1982.

Securities of a company shall not be treated for the purposes of this section as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on a recognised stock exchange.

(3) Nothing in subsection (2) above affects the operation of section 127 in relation to the holding, but without prejudice to section 131.

(4) If a person so elects, quoted securities, as defined in paragraph 8 of Schedule 2 which are covered by the election—

(a) shall be treated as an accretion to an existing 1982 holding or, as the case may be, as constituting a new 1982 holding; and

(b) shall be excluded from paragraph 2 of that Schedule;

and the relevant allowable expenditure which is attributable to that 1982 holding shall be adjusted or determined accordingly.

(5) Paragraphs 4(8) to (13) and 5 to 8 of Schedule 2 shall apply in relation to an election under subsection (4) above as they apply in relation to an election under paragraph 4(2) of that Schedule, but with the substitution for any reference to 19th March 1968 of a reference to 31st March 1985 in the case of holdings or disposals by companies and 5th April 1985 in any other case.

(6) For the purpose of computing the indexation allowance (if any) on a disposal of a 1982 holding, the relevant allowable expenditure attributable to the holding on the coming into force of this section shall be the amount which, if the holding had been disposed of immediately before the coming into force of this section, would have been the relevant allowable expenditure in relation to that holding on that disposal, and for the purposes of section 54(4) relevant allowable expenditure attributable to a 1982 holding shall be deemed to be expenditure falling within section 38(1)(a).

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

Marginal Citations
M19 1985 c. 54.

110 New holdings: indexation allowance.

(1) **[**F151For the purposes of corporation tax this**]** section and section 114—

(a) apply in place of section 54 in relation to a disposal of a **[**F152section 104 holding**]** for the purpose of computing the indexation allowance;

(b) have effect subject to sections 105 and 106.

(2) On any disposal of a **[**F152section 104 holding**]**, other than a disposal of the whole of it—

(a) the qualifying expenditure and the indexed pool of expenditure shall each be apportioned between the part disposed of and the remainder in the same proportions as, under this Act, the relevant allowable expenditure is apportioned; and

(b) the indexation allowance is the amount by which the portion of the indexed pool which is attributed to the part disposed of exceeds the portion of the qualifying expenditure which is attributed to that part.

(3) On a disposal of the whole of a **[**F152section 104 holding**]**, the indexation allowance is the amount by which the indexed pool of expenditure at the time of the disposal exceeds the qualifying expenditure at that time.

(4) In relation to a **[**F152section 104 holding**]**, the qualifying expenditure is at any time the amount which would be the aggregate of the relevant allowable expenditure in relation to a disposal of the whole of the holding occurring at that time.

(5) Subject to subsection (6) below and section 114 the indexed pool of expenditure shall come into being at the time that the holding comes into being or, if it is earlier, when any of the qualifying expenditure is incurred and shall at the time it comes into being be the same as the qualifying expenditure at that time.

(6) In relation to a **[**F152section 104 holding**]** which was in existence immediately before the coming into force of this section, the indexed pool of expenditure on the coming into force of this section shall be the same as it was for the purposes of Part III of Schedule 19 to the M20Finance Act 1985 immediately before then.

[F153(6A) Where a disposal to a person acquiring or adding to a **[**F152section 104 holding**]** is treated by virtue of any enactment as one on which neither a gain nor a loss accrues to the person making the disposal—

(a) section 56(2) shall not apply to the disposal (and, accordingly, the amount of the consideration shall not be calculated on the assumption that a gain of an amount equal to the indexation allowance accrues to the person making the disposal), but

(b) an amount equal to the indexation allowance on the disposal shall be added to the indexed pool of expenditure for the holding acquired or, as the case may be, held by the person to whom the disposal is made (and, where it is added to the indexed pool of expenditure for a holding so held, it shall be added after any increase required by subsection (8)(a) below).**]**

(7) Any reference below to an operative event is a reference to any event (whether a disposal or otherwise) which has the effect of reducing or increasing the qualifying expenditure referable to the **[**F152section 104 holding**]**.

(8) Whenever an operative event occurs—

(a) there shall be added to the indexed pool of expenditure the indexed rise, as calculated under subsection (10) or (11) below, in the value of the pool since the last operative event or, if there has been no previous operative event, since the pool came into being; and

(b) if the operative event results in an increase in the qualifying expenditure then, in addition to any increase under paragraph (a) above, the same increase shall be made to the indexed pool of expenditure; and

(c) if the operative event is a disposal resulting in a reduction in the qualifying expenditure, the indexed pool of expenditure shall be reduced in the same proportion as the qualifying expenditure is reduced; and

(d) if the operative event results in a reduction in the qualifying expenditure but is not a disposal, the same reduction shall be made to the indexed pool of expenditure.

(9) Where the operative event is a disposal—

(a) any addition under subsection (8)(a) above shall be made before the calculation of the indexation allowance under subsection (2) above; and

(b) the reduction under subsection (8)(c) above shall be made after that calculation.

(10) At the time of any operative event, the indexed rise in the indexed pool of expenditure is a sum produced by multiplying the value of the pool immediately before the event by a figure expressed as a decimal and determined, subject to subsection (11) below, by the formula—

$$\frac{RE - RL}{RL}$$

where—

RE is the retail prices index for the month in which the operative event occurs; and

RL is the retail prices index for the month in which occurred the immediately preceding operative event or, if there has been no such event, in which the indexed pool of expenditure came into being.

(11) If RE, as defined in subsection (10) above, is equal to or less than RL, as so defined, the indexed rise is nil.

Textual Amendments

F151 Words in s. 110(1) substituted (with effect in accordance with s. 125(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 125(1)**

F152 Words in s. 110 substituted (with effect in accordance with s. 123(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 123(5)(b)**

F153 S. 110(6A) inserted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(6)** (with Sch. 12)

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

Marginal Citations

M20 1985 c. 54.

[F154 110A Indexation for section 104 holdings: capital gains tax.

(1) For the purposes of capital gains tax (but not corporation tax) where—

(a) there is a disposal on or after 6th April 1998 of a section 104 holding, and

(b) any of the relevant allowable expenditure was incurred before 6th April 1998,

this section applies, in place of section 54 and subject to section 105, for computing the indexation allowance.

(2) There shall be an indexed pool of expenditure and subsection (2) or, as the case may be, subsection (3) of section 110 shall apply by reference to that pool in relation to the disposal as it would apply (by reference to the pool for which that section provides) for the purposes of corporation tax.

(3) The amount at any time of the indexed pool of expenditure shall be determined by—

(a) taking the amount which would, under section 110 and section 114, have been the amount of the indexed pool of expenditure for the purposes of a disposal of the whole of the holding at the end of 5th April 1998; and

(b) making any adjustments by way of increase or reduction that would be required to be made by virtue of subsection (8) of section 110 on the assumptions set out in subsection (4) below.

(4) Those assumptions are—

(a) that the indexed pool of expenditure is an indexed pool of expenditure for the purposes of section 110;

(b) that no increase or reduction is to be made except for an operative event on or after 6th April 1998; and

(c) that paragraph (a) of section 110(8) and section 114 are to be disregarded.

(5) For the purposes of making any adjustment in accordance with subsection (3)(b) above, subsection (9) of section 110 shall be assumed to provide only that, where the operative event is a disposal, the calculation of the indexation allowance under subsection (2) of that section, as applied by subsection (2) above, is to be made before the reduction under subsection (8)(c) of that section.**]**

Textual Amendments

F154 S. 110A inserted (with effect in accordance with s. 125(4)(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 125(2)**

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

F155 111 Indexation: building society etc. shares.

. . . . . .

Textual Amendments

F155 S. 111 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

112 Parallel pooling regulations.

(1) The M21Capital Gains Tax (Parallel Pooling) Regulations 1986 made by the Treasury under paragraph 21 of Schedule 19 to the M22Finance Act 1985 shall continue to have effect notwithstanding the repeal by this Act of that Schedule, and for the purposes of section 14 of the M23Interpretation Act 1978 that paragraph shall be deemed not to have been repealed.

(2) An election under Schedule 6 to the M24Finance Act 1983 which has not been revoked before 6th April 1992 shall not have effect in relation to any disposal after 5th April 1992 and may, if the Board allow, be revoked by notice to the inspector.

(3) All such adjustments shall be made, whether by way of discharge or repayment of tax, or the making of assessments or otherwise, as are required in consequence of a revocation under subsection (2) above.

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

Marginal Citations

M21 S.I.1986/387.

M22 1985 c. 54.

M23 1978 c. 30.

M24 1983 c. 28.

113 Calls on shares.

(1) Subsection (2) below applies where—

(a) on a disposal to which section 53 applies, the relevant allowable expenditure is or includes the amount or value of the consideration given for the issue of shares or securities in, or debentures of, a company; and

(b) the whole or some part of that consideration was given after the expiry of the period of 12 months beginning on the date of the issue of the shares, securities or debentures.

(2) For the purpose of computing the indexation allowance (if any) on the disposal referred to in subsection (1)(a) above—

(a) so much of the consideration as was given after the expiry of the period referred to in subsection (1)(b) above shall be regarded as an item of expenditure separate from any consideration given during that period; and

(b) section 54(4) shall not apply to that separate item of expenditure which, accordingly, shall be regarded as incurred at the time the consideration in question was actually given.

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

114 Consideration for options.

(1) If, in a case where section 110(8)(b) applies, the increase in the qualifying expenditure is, in whole or in part, attributable to the cost of acquiring an option binding the grantor to sell ("the option consideration"), then, in addition to any increase under section 110(8)(a) or (b), the indexed pool of expenditure shall be increased by an amount equal to the indexed rise in the option consideration, as determined under subsection (2) below.

(2) The indexed rise in the option consideration is a sum produced by multiplying the consideration by a figure expressed as a decimal and determined, subject to subsection (3) below, by the formula—

$$\frac{RO - RA}{RA}$$

where—

RO is the retail prices index for the month in which falls the date on which the option is exercised; and

RA is the retail prices index for the month in which falls the date in which the option was acquired or, if it is later, March 1982.

(3) If RO, as defined in subsection (2) above, is equal to or less than RA, as so defined, the indexed rise is nil.

Modifications etc. (not altering text)

C67 Ss. 104-114 modified by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), **reg. 27(2)** (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, **regs. 1(1)**, 12)

C68 Ss. 104-114 modified (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(2)**

Gilt-edged securities and qualifying corporate bonds

115 Exemptions for gilt-edged securities and qualifying corporate bonds etc.

(1) A gain which accrues on the disposal by any person of—

(a) gilt-edged securities or qualifying corporate bonds, or

(b) any option or contract to acquire or dispose of gilt-edged securities or qualifying corporate bonds,

shall not be a chargeable gain.

(2) In subsection (1) above the reference to the disposal of a contract to acquire or dispose of gilt-edged securities or qualifying corporate bonds is a reference to the disposal of the outstanding obligations under such a contract.

(3) Without prejudice to section 143(5), where a person who has entered into any such contract as is referred to in subsection (1)(b) above closes out that contract by entering into another contract with obligations which are reciprocal to those of the first-mentioned contract, that transaction shall for the purposes of this section constitute the disposal of an asset, namely, his outstanding obligations under the first-mentioned contract.

116 Reorganisations, conversions and reconstructions.

(1) This section shall have effect in any case where a transaction occurs of such a description that, apart from the provisions of this section—

(a) sections 127 to 130 would apply by virtue of any provision of Chapter II of this Part; and

(b) either the original shares would consist of or include a qualifying corporate bond and the new holding would not, or the original shares would not and the new holding would consist of or include such a bond;

and in paragraph (b) above "the original shares" and "the new holding" have the same meaning as they have for the purposes of sections 127 to 130.

(2) In this section **[**[F156]references to a transaction include references to any conversion of securities (whether or not effected by a transaction) within the meaning of section 132 and**]** "relevant transaction" means a reorganisation, conversion of securities or other transaction such as is mentioned in subsection (1) above, and, in addition to its application where the transaction takes place after the coming into force of this section, subsection (10) below applies where the relevant transaction took place before the coming into force of this section so far as may be necessary to enable any gain or loss deferred under paragraph 10 of Schedule 13 to the [M25]Finance Act 1984 to be taken into account on a subsequent disposal.

(3) Where the qualifying corporate bond referred to in subsection (1)(b) above would constitute the original shares for the purposes of sections 127 to 130, it is in this section referred to as "the old asset" and the shares or securities which would constitute the new holding for those purposes are referred to as "the new asset".

(4) Where the qualifying corporate bond referred to in subsection (1)(b) above would constitute the new holding for the purposes of sections 127 to 130, it is in this section referred to as "the new asset" and the shares or securities which would constitute the original shares for those purposes are referred to as "the old asset".

[F157(4A) In determining for the purposes of subsections (1) to (4) above, as they apply for the purposes of corporation tax—

(a) whether sections 127 to 130 would apply in any case, and

(b) what, in a case where they would apply, would constitute the original shares and the new holding,

it shall be assumed that every asset representing a loan relationship of a company is a security within the meaning of section 132.**]**

(5) So far as the relevant transaction relates to the old asset and the new asset, sections 127 to 130 shall not apply in relation to it.

(6) In accordance with subsection (5) above, the new asset shall not be treated as having been acquired on any date other than the date of the relevant transaction or, subject to subsections (7) and (8) below, for any consideration other than the market value of the old asset as determined immediately before that transaction.

(7) If, on the relevant transaction, the person concerned receives, or becomes entitled to receive, any sum of money which, in addition to the new asset, is by way of consideration for the old asset, that sum shall be deducted from the consideration referred to in subsection (6) above.

(8) If, on the relevant transaction, the person concerned gives any sum of money which, in addition to the old asset, is by way of consideration for the new asset, that sum shall be added to the consideration referred to in subsection (6) above.

[F158(8A) Where subsection (6) above applies for the purposes of corporation tax in a case where the old asset consists of a qualifying corporate bond, Chapter II of Part IV of the Finance Act 1996 (loan relationships) shall have effect so as to require such debits and credits to be brought into account for the purposes of that Chapter in relation to the relevant transaction as would have been brought into account if the transaction had been a disposal of the old asset at the market value mentioned in that subsection.**]**

(9) In any case where the old asset consists of a qualifying corporate bond, then, so far as it relates to the old asset and the new asset, the relevant transaction shall be treated for the purposes of this Act as a disposal of the old asset and an acquisition of the new asset.

(10) Except in a case falling within subsection (9) above, so far as it relates to the old asset and the new asset, the relevant transaction shall be treated for the purposes of this Act as not involving any disposal of the old asset but—

(a) there shall be calculated the chargeable gain or allowable loss that would have accrued if, at the time of the relevant transaction, the old asset had been disposed of for a consideration equal to its market value immediately before that transaction; and

(b) subject to subsections (12) to (14) below, the whole or a corresponding part of the chargeable gain or allowable loss mentioned in paragraph (a) above shall be deemed to accrue on a subsequent disposal of the whole or part of the new asset (in addition to any gain or loss that actually accrues on that disposal); and

(c) on that subsequent disposal, section 115 shall have effect only in relation to any gain or loss that actually accrues and not in relation to any gain or loss which is deemed to accrue by virtue of paragraph (b) above.

(11) Subsection (10)(b) and (c) above shall not apply to any disposal falling within section 58(1), 62(4), 139, **[**F159140A,**]** 171(1) or 172, but a person who has acquired the new asset on a disposal falling within any of those sections (and without there having been a previous disposal not falling within any of those sections or a devolution on death) shall be treated for the purposes of subsection (10)(b) and (c) above as if the new asset had been acquired by him at the same time and for the same consideration as, having regard to subsections (5) to (8) above, it was acquired by the person making the disposal.

(12) In any case where—

(a) on the calculation under subsection (10)(a) above, a chargeable gain would have accrued, and

(b) the consideration for the old asset includes such a sum of money as is referred to in subsection (7) above,

then, subject to subsection (13) below, the proportion of that chargeable gain which that sum of money bears to the market value of the old asset immediately before the relevant transaction shall be deemed to accrue at the time of that transaction.

(13) If F160... the sum of money referred to in subsection (12)(b) above is small, as compared with the market value of the old asset immediately before the relevant transaction, F160... subsection (12) above shall not apply.

(14) In a case where subsection (12) above applies, the chargeable gain which, apart from that subsection, would by virtue of subsection (10)(b) above be deemed to accrue on a subsequent disposal of the whole or part of the new asset shall be reduced or, as the case may be, extinguished by deducting therefrom the amount of the chargeable gain which, by virtue of subsection (12) above, is deemed to accrue at the time of the relevant transaction.

(15) In any case where—

(a) the new asset mentioned in subsections (10) and (11) above is a qualifying corporate bond in respect of which an allowable loss is treated as accruing under section 254(2), and

(b) the loss is treated as accruing at a time falling after the relevant transaction but before any actual disposal of the new asset subsequent to the relevant transaction,

then for the purposes of subsections (10) and (11) above a subsequent disposal of the new asset shall be treated as occurring at (and only at) the time the loss is treated as accruing.

[F161(16) This section has effect for the purposes of corporation tax notwithstanding anything in section 80(5) of the Finance Act 1996 (matters to be brought into account in the case of loan relationships only under Chapter II of Part IV of that Act).**]**

Textual Amendments

F156 Words in s. 116(2) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(4)**

F157 S. 116(4A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 60(2)** (with Sch. 15)

F158 S. 116(8A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 60(3)** (with Sch. 15)

F159 Words in s. 116(11) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(3)**

F160 Words in s. 116(13) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 51, **Sch. 41 Pt. V(10)**

F161 S. 116(16) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 60(4)** (with Sch. 15)

Modifications etc. (not altering text)

C73 S. 116 modified (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 98, **Sch. 10 para. 5(1)(3)**

C74 S. 116 modified (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 para. 30(2)**

C75 S. 116 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(b)** (with Sch. 7 para. 9(1))

C76 S. 116 modified (with effect in accordance with s. 66(1) of the amending Act) by Finance Act 1999 (c. 16), **s. 66(2)**

Marginal Citations

M25 1984 c. 43.

117 Meaning of "qualifying corporate bond".

[F162(A1) For the purposes of corporation tax "qualifying corporate bond" means (subject to sections 117A and 117B below) any asset representing a loan relationship of a company; and for purposes other than those of corporation tax references to a qualifying corporate bond shall be construed in accordance with the following provisions of this section.**]**

(1) For the purposes of this section, a "corporate bond" is a security, as defined in section 132(3)(b)—

(a) the debt on which represents and has at all times represented a normal commercial loan; and

(b) which is expressed in sterling and in respect of which no provision is made for conversion into, or redemption in, a currency other than sterling,

and in paragraph (a) above "normal commercial loan" has the meaning which would be given by sub-paragraph (5) of paragraph 1 of Schedule 18 to the Taxes Act if for paragraph (a)(i) to (iii) of that sub-paragraph there were substituted the words " corporate bonds (within the meaning of section 117 of the 1992 Act) ".

(2) For the purposes of subsection (1)(b) above—

(a) a security shall not be regarded as expressed in sterling if the amount of sterling falls to be determined by reference to the value at any time of any other currency or asset; and

(b) a provision for redemption in a currency other than sterling but at the rate of exchange prevailing at redemption shall be disregarded.

[F163(2AA) For the purposes of this section "corporate bond" also includes any asset which is not included in the definition in subsection (1) above and which is a relevant discounted security for the purposes of Schedule 13 to the Finance Act 1996.**]**

F164(2A) . . . . . .

F165(3) . . . . . .

(4) For the purposes of this section "corporate bond" also includes a share in a building society—

(a) which is a qualifying share,

(b) which is expressed in sterling, and

(c) in respect of which no provision is made for conversion into, or redemption in, a currency other than sterling.

(5) For the purposes of subsection (4) above, a share in a building society is a qualifying share if—

(a) it is a permanent interest bearing share, or

(b) it is of a description specified in regulations made by the Treasury for the purposes of this paragraph.

(6) Subsection (2) above applies for the purposes of subsection (4) above as it applies for the purposes of subsection (1)(b) above, treating the reference to a security as a reference to a share.

F166**[**(6A) For the purposes of this section "corporate bond" also includes, except in relation to a person who acquires it on or after a disposal in relation to which section 115 has or has had effect in accordance with section 116(10)(c), any debenture issued on or after 16th March 1993 which is not a security (as defined in section 132) but—

(a) is issued in circumstances such that it would fall by virtue of section 251(6) to be treated for the purposes of section 251 as such a security; and

(b) would be a corporate bond if it were a security as so defined.**]**

[F167(6B) An excluded indexed security issued on or after 6th April 1996 is not a corporate bond for the purposes of this section; and an excluded indexed security issued before that date shall be taken to be such a bond for the purposes of this section only if—

(a) it would be so taken apart from this subsection; and

(b) the question whether it should be so taken arises for the purposes of section 116(10).

(6C) In subsection (6B) above "excluded indexed security" has the same meaning as in Schedule 13 to the Finance Act 1996 (relevant discounted securities).**]**

(7) Subject to subsections (9) and (10) below, for the purposes of this Act, a corporate bond—

(a) is a "qualifying" corporate bond if it is issued after 13th March 1984; and

(b) becomes a "qualifying" corporate bond if, having been issued on or before that date, it is acquired by any person after that date and that acquisition is not as a result of a disposal which is excluded for the purposes of this subsection, or which was excluded for the purposes of section 64(4) of the M26Finance Act 1984.

(8) Where a person disposes of a corporate bond which was issued on or before 13th March 1984 and, before the disposal, the bond had not become a qualifying corporate bond, the disposal is excluded for the purposes of subsection (7) above if, by virtue of any enactment—

(a) the disposal is treated for the purposes of this Act as one on which neither a gain nor a loss accrues to the person making the disposal; or

(b) the consideration for the disposal is treated for the purposes of this Act as reduced by an amount equal to the held-over gain on that disposal, as defined for the purposes of section 165 or 260.

[F168(8A) A corporate bond falling within subsection (2AA) above is a qualifying corporate bond whatever its date of issue.**]**

F169(9) . . . . . .

F169(10) . . . . . .

(11) For the purposes of this section—

(a) where a security is comprised in a letter of allotment or similar instrument and the right to the security thereby conferred remains provisional until accepted, the security shall not be treated as issued until there has been acceptance; and

(b) "permanent interest bearing share" has the same meaning as in the M27Building Societies (Designated Capital Resources) (Permanent Interest Bearing Shares) Order 1991 **[**F170as if that Order were still in force, with the modification that, for references to "the first criterion" wherever they appear (including definitions), there are substituted references to "the second criterion".**]**

(12) The Treasury may by regulations provide that for the definition of the expression "permanent interest bearing share" in subsection (11) above (as it has effect for the time being) there shall be substituted a different definition of that expression, and regulations under this subsection or subsection (5)(b) above may contain such supplementary, incidental, consequential or transitional provision as the Treasury thinks fit.

(13) This section shall have effect for the purposes of section 254 with the omission of subsections (4) to (6), (11) and (12).

Textual Amendments

F162 S. 117(A1) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 61(1)** (with Sch. 15)

F163 S. 117(2AA) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 61(2)** (with Sch. 15)

F164 S. 117(2A) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F165 S. 117(3) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F166 S. 117(6A) inserted (27.7.1993 with effect as mentioned in s. 84(3)) by 1993 c. 34, **s. 84(1)(3)**

F167 S. 117(6B)(6C) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 61(3)** (with Sch. 15)

F168 S. 117(8A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 61(4)** (with Sch. 15)

F169 S. 117(9)(10) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F170 Words in s. 117(11)(b) added (29.7.1999) by The Capital Gains Tax (Definition of Permanent Interest Bearing Share) Regulations 1999 (S.I. 1999/1953), regs. 1, **2**

Modifications etc. (not altering text)

C77 S. 117 applied by 1993 c. 34, **s. 153(11A)** (as inserted (retrospective to 27.7.1993) by Finance Act 1995 (c. 4), Sch. 24 paras. 1, **4(4)**)
S. 117 modified by 1993 c. 34, **Sch. 17 para. 5** (as substituted (retrospective to 27.7.1993) by Finance Act 1995 (c. 4), Sch. 24 paras. 1, **6**)

C78 S. 117(2AA) modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 65(11)**

Marginal Citations

M26 1984 c. 43.

M27 S.I.1991/702.

[F171 117A Assets that are not qualifying corporate bonds for corporation tax purposes.

(1) An asset to which this section applies is not a qualifying corporate bond for the purposes of corporation tax in relation to any disposal of that asset.

(2) This section applies to any asset representing a loan relationship of a company where—

(a) subsection (3) or (4) below applies to the asset; and

(b) it is held in exempt circumstances.

(3) This subsection applies to an asset if—

(a) the settlement currency of the debt to which it relates is a currency other than sterling; and

(b) that debt is not a debt on a security.

(4) This subsection applies to an asset if the debt to which it relates is a debt on a security and is in a foreign currency.

(5) For the purposes of subsection (4) above a debt is a debt in a foreign currency if it is—

(a) a debt expressed in a currency other than sterling;

(b) a debt the amount of which in sterling falls at any time to be determined by reference to the value at that time of a currency other than sterling; or

(c) subject to subsection (6) below, a debt as respects which provision is made for its conversion into, or redemption in, a currency other than sterling.

(6) A debt is not a debt in a foreign currency for those purposes by reason only that provision is made for its redemption on payment of an amount in a currency other than sterling equal, at the rate prevailing at the date of redemption, to a specified amount in sterling.

(7) The provisions specified in subsection (8) below, so far as they require a disposal to be treated as a disposal on which neither a gain nor a loss accrues, shall not apply to any disposal of an asset to which this section applies.

(8) The provisions referred to in subsection (7) above are—

(a) sections 139, 140A, 171 and 172 of this Act; and

(b) section 486(8) of the Taxes Act.

(9) Paragraph 3 of Schedule 17 to the Finance Act 1993 shall have effect for construing the reference in subsection (2)(b) above to exempt circumstances as if references to a currency were references to the debt to which the relationship relates.

(10) In this section "security" includes a debenture that is deemed to be a security for the purposes of section 251 by virtue of subsection (6) of that section.

Textual Amendments

F171 Ss. 117A, 117B inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 62** (with Sch. 15)

117B Holdings in unit trusts and offshore funds excluded from treatment as qualifying corporate bonds.

(1) For the purposes of corporation tax an asset to which this section applies is not a qualifying corporate bond in relation to any disposal of that asset in an accounting period for which that asset falls, under paragraph 4 of Schedule 10 to the Finance Act 1996 (holdings in unit trusts and offshore funds), to be treated as a right under a creditor relationship of a company.

(2) This section applies to an asset which is comprised in a relevant holding (within the meaning of paragraph 4 of Schedule 10 to the Finance Act 1996) if—

(a) it is denominated in a currency other than sterling; and

(b) it is held in exempt circumstances.

(3) For the purposes of this section—

(a) a unit in a unit trust scheme, or

(b) a right (other than a share in a company) which constitutes a relevant interest in an offshore fund,

shall be taken to be denominated in a currency other than sterling if the price at which it may be acquired from, or disposed of to, persons concerned in the management of the trust or fund is fixed by those persons in a currency other than sterling**[**[F172]; and shares of a given class in an open-ended investment company shall be taken to be denominated in a currency other than sterling if the price at which they may be acquired from, or disposed of to, the company or its authorised corporate director is fixed by the company or director in a currency other than sterling, or (as the case may be) the price or prices at which they are quoted in The Stock Exchange Daily Official List is in a currency other than sterling**]**.

(4) For the purposes of this section shares constituting a relevant interest in an offshore fund shall be taken to be denominated in a currency other than sterling if their nominal value is expressed in such a currency.

(5) The provisions specified in subsection (6) below, so far as they require a disposal to be treated as a disposal on which neither a gain nor a loss accrues, shall not apply to any disposal in relation to which this section applies.

(6) The provisions referred to in subsection (5) above are—

(a) sections 139, 140A, 171 and 172 of this Act; and

(b) section 486(8) of the Taxes Act.

(7) Paragraph 3 of Schedule 17 to the Finance Act 1993 shall have effect for construing the reference in subsection (2)(b) above to exempt circumstances as if references to a currency were references to the asset in question.

(8) Paragraph 7 of Schedule 10 to the Finance Act 1996 shall apply for construing any reference in this section to a relevant interest in an offshore fund as it applies for the purposes of paragraph 4 of that Schedule.**]**

Textual Amendments

F171 Ss. 117A, 117B inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 62** (with Sch. 15)

F172 Words in s. 117B(3) added (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), regs. 1(1), **21**

Deep discount securities, the accrued income scheme etc.

[F173]118 Amount to be treated as consideration on disposal of deep discount securities etc.

. . . . . .

Textual Amendments

F173 S. 118 repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

119 Transfers of securities subject to the accrued income scheme.

(1) Where there is a transfer of securities within the meaning of section 710 of the Taxes Act (accrued income scheme)—

(a) if section 713(2)(a) or (3)(a) of that Act applies, section 37 shall be disregarded in computing the gain accruing on the disposal concerned;

(b) if section 713(2)(b) or (3)(b) of that Act applies, section 39 shall be disregarded in computing the gain accruing to the transferee if he disposes of the securities;

but subsections (2) and (3) below shall apply.

(2) Where the securities are transferred with accrued interest (within the meaning of section 711 of the Taxes Act)—

(a) if section 713(2)(a) of that Act applies, an amount equal to the accrued amount (determined under that section) shall be excluded from the consideration mentioned in subsection (8) below;

(b) if section 713(2)(b) of that Act applies, an amount equal to that amount shall be excluded from the sums mentioned in subsection (9) below.

(3) Where the securities are transferred without accrued interest (within the meaning of section 711 of the Taxes Act)—

(a) if section 713(3)(a) of that Act applies, an amount equal to the rebate amount (determined under that section) shall be added to the consideration mentioned in subsection (8) below;

(b) if section 713(3)(b) of that Act applies, an amount equal to that amount shall be added to the sums mentioned in subsection (9) below.

(4) Where section 716 of the Taxes Act applies—

(a) if subsection (2) or (3) of that section applies, section 37 shall be disregarded in computing the gain accruing on the disposal concerned, but the relevant amount shall be excluded from the consideration mentioned in subsection (8) below; and

(b) if subsection (4) of that section applies, section 39 shall be disregarded in computing the gain accruing on the disposal concerned, but the relevant amount shall be excluded from the sums mentioned in subsection (9) below.

(5) In subsection (4) above "the relevant amount" means an amount equal to—

(a) if paragraph (b) below does not apply, the amount of the unrealised interest in question (within the meaning of section 716 of the Taxes Act);

(b) if section 719 of the Taxes Act applies—

(i) in a case falling within subsection (4)(a) above, amount A (within the meaning of section 719);

(ii) in a case falling within subsection (4)(b) above, amount C (within the meaning of section 719).

(6) In relation to any securities which by virtue of subsection (7) below are treated for the purposes of this subsection as having been transferred, subsections (2) and (3) above shall have effect as if for "applies" (in each place where it occurs) there were substituted " would apply if the disposal were a transfer ".

(7) Where there is a disposal of securities for the purposes of this Act which is not a transfer for the purposes of section 710 of the Taxes Act but, if it were such a transfer, one or more of the following paragraphs would apply, namely, paragraphs (a) and (b) of section 713(2) and paragraphs (a) and (b) of section 713(3) of that Act, the securities shall be treated—

(a) for the purposes of subsection (6) above, as transferred on the day of the disposal, and

(b) for the purposes of subsections (2) and (3) above, as transferred with accrued interest if, had the disposal been a transfer for the purposes of section 710, it would have been a transfer with accrued interest and as transferred without accrued interest if, had the disposal been such a transfer, it would have been a transfer without accrued interest.

(8) The consideration is the consideration for the disposal of the securities transferred which is taken into account in the computation of the gain accruing on the disposal.

(9) The sums are the sums allowable to the transferee as a deduction from the consideration in the computation of the gain accruing to him if he disposes of the securities.

(10) Where on a conversion or exchange of securities a person is treated as entitled to a sum under subsection (2)(a) of section 713 of the Taxes Act an amount equal to the accrued amount (determined under that section) shall, for the purposes of this Act, be treated as follows—

(a) to the extent that it does not exceed the amount of any consideration which the person receives (or is deemed to receive) or becomes entitled to receive

on the conversion or exchange (other than his new holding), it shall be treated as reducing that consideration; and

(b) to the extent that it does exceed that amount, it shall be treated as consideration which the person gives on the conversion or exchange;

and where on a conversion or exchange of securities a person is treated as entitled to relief under subsection (3)(a) of that section an amount equal to the rebate amount (determined under that section) shall, for the purposes of the computation of the gain, be treated as consideration which the person receives on the conversion or exchange.

(11) In subsection (10) above "conversion" means conversion within the meaning of section 132 and "exchange" means an exchange which by virtue of Chapter II of this Part does not involve a disposal.

120 Increase in expenditure by reference to tax charged in relation to shares etc.

(1) Where an amount is chargeable to tax under Chapter II of Part III of the [M28]Finance Act 1988 on a person who acquires shares or an interest in shares, then on the first disposal of the shares (whether by him or by another person) after his acquisition, section 38(1)(a) shall apply as if a sum equal to the amount chargeable had formed part of the consideration given by the person making the disposal for his acquisition of the shares; and this subsection shall apply with the appropriate modifications in a case to which section 83 of that Act applies.

This subsection shall be construed as if it were contained in Chapter II of Part III of the [M29]Finance Act 1988.

(2) Section 38(1)(a) applies as if the relevant amount as defined in the following provisions of this section in the cases there specified had formed part of the consideration given by the person making the disposal for his acquisition of the assets in question.

(3) Where an amount is chargeable to tax by virtue of section 162(5) of the Taxes Act in respect of shares or an interest in shares, then—

(a) on a disposal of the shares or interest, where that is the event giving rise to the charge; or

(b) in any case, on the first disposal of the shares or interest after the event,

the relevant amount is a sum equal to the amount so chargeable.

(4) If a gain chargeable to tax under section 135(1) or (6) of the Taxes Act is realised by the exercise of a right to acquire shares, the relevant amount is a sum equal to the amount of the gain so chargeable to tax.

(5) Where an amount is chargeable to tax under section 138 of the Taxes Act on a person acquiring any shares or interest in shares, then on the first disposal (whether by him or another person) of the shares after his acquisition, the relevant amount is an amount equal to the amount so chargeable.

[[F174](5A) Where an amount is chargeable to tax under section 140A of the Taxes Act in respect of—

(a) the acquisition or disposal of any interest in shares, or

(b) any interest in shares ceasing to be only conditional,

the relevant amount is a sum equal to the amount so chargeable.

(5B) Where an amount is chargeable to tax under section 140D of the Taxes Act in respect of the conversion of shares, the relevant amount is a sum equal to the amount so chargeable.**]**

(6) Where an amount was chargeable to tax under **[**F175the applicable provision**]** of the Taxes Act in respect of shares acquired in exercise of any such right as is mentioned in section 185(1) of that Act, the relevant sum in relation to those shares is an amount equal to the amount so chargeable**[**F176; and in this subsection "the applicable provision" means—

(a) subsection (6) of section 185 of the Taxes Act (as that subsection had effect before the coming into force of section 39(5) of the M30Finance Act 1991), or

[F177(b) subsection (6A) of that section (as that subsection has effect in relation to rights obtained before the day on which the Finance Act 1996 was passed), or

(c) subsection (6) of that section (as that subsection has effect in relation to rights obtained on or after that day).**]]**

(7) Subsections (3), (4), (5)**[**F178, (5A), (5B)**]** and (6) above shall be construed as one with sections 162, 135, 138**[**F179, 140A, 140D**]** and 185 of the Taxes Act respectively.

[F180(8) For the purposes of subsection (5A) above this section shall have effect as if references in this section to shares included anything referred to as shares in section 140A of the Taxes Act.**]**

Textual Amendments

F174 S. 120(5A)(5B) inserted (with effect in accordance with s. 54(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 54(2)**

F175 Words in s. 120(6) substituted (*retrospectively*) by 1993 c. 34, **s. 105(1)(2)**

F176 Words in s. 120(6) inserted (*retrospectively*) by 1993 c. 34, **s. 105(1)(2)**

F177 S. 120(6)(b)(c) substituted for s. 120(6)(b) (29.4.1996) by Finance Act 1996 (c. 8), **s. 114(8)**

F178 Words in s. 120(7) inserted (with effect in accordance with s. 54(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 54(3)(a)**

F179 Words in s. 120(7) inserted (with effect in accordance with s. 54(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 54(3)(b)**

F180 S. 120(8) inserted (with effect in accordance with s. 54(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 54(4)**

Marginal Citations

M28 1988 c. 39.

M29 1988 c. 39.

M30 1991 c. 31.

Savings certificates etc.

121 Exemption for government non-marketable securities.

(1) Savings certificates and non-marketable securities issued under the M31National Loans Act 1968 or the M32National Loans Act 1939, or any corresponding enactment forming part of the law of Northern Ireland, shall not be chargeable assets, and accordingly no chargeable gain shall accrue on their disposal.

(2) In this section—

(a) "savings certificates" means savings certificates issued under section 12 of the [M33]National Loans Act 1968, or section 7 of the [M34]National Debt Act 1958, or section 59 of the [M35]Finance Act 1920, and any war savings certificates as defined in section 9(3) of the [M36]National Debt Act 1972, together with any savings certificates issued under any enactment forming part of the law of Northern Ireland and corresponding to the said enactments, and

(b) "non-marketable securities" means securities which are not transferable, or which are transferable only with the consent of some Minister of the Crown, or the consent of a department of the Government of Northern Ireland, or only with the consent of the National Debt Commissioners.

Marginal Citations

M31 1968 c. 13.
M32 1939 c. 117.
M33 1968 c. 13.
M34 1958 (7 Eliz. 2) c.6.
M35 1920 c.18.
M36 1972 c. 65.

Capital distribution in respect of shares etc.

122 Distribution which is not a new holding within Chapter II.

(1) Where a person receives or becomes entitled to receive in respect of shares in a company any capital distribution from the company (other than a new holding as defined in section 126) he shall be treated as if he had in consideration of that capital distribution disposed of an interest in the shares.

(2) If [F181]... the amount distributed is small, as compared with the value of the shares in respect of which it is distributed, [F181]...—

(a) the occasion of the capital distribution shall not be treated for the purposes of this Act as a disposal of the asset, and

(b) the amount distributed shall be deducted from any expenditure allowable under this Act as a deduction in computing a gain or loss on the disposal of the shares by the person receiving or becoming entitled to receive the distribution of capital.

[F182](3) . . . . . .

(4) Where the allowable expenditure is less than the amount distributed (or is nil)—

(a) **[**[F183]subsection (2)**]** above shall not apply, and

(b) if the recipient so elects (and there is any allowable expenditure)—

(i) the amount distributed shall be reduced by the amount of the allowable expenditure, and

(ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the capital distribution, or on any subsequent occasion.

In this subsection "allowable expenditure" means the expenditure which immediately before the occasion of the capital distribution was attributable to the shares under paragraphs (a) and (b) of section 38(1).

(5) In this section—

(a) the "amount distributed" means the amount or value of the capital distribution,

(b) "capital distribution" means any distribution from a company, including a distribution in the course of dissolving or winding up the company, in money or money's worth except a distribution which in the hands of the recipient constitutes income for the purposes of income tax.

Textual Amendments

F181 Words in s. 122(2) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 52(1), **Sch. 41 Pt. V(10)**

F182 S. 122(3) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 52(2), **Sch. 41 Pt. V(10)**

F183 Words in s. 122(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 52(3)**

Modifications etc. (not altering text)

C79 S. 122 modified (27.7.1992) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 16(2)(b)**

123 Disposal of right to acquire shares or debentures.

(1) Where a person receives or becomes entitled to receive in respect of any shares in a company a provisional allotment of shares in or debentures of the company and he disposes of his rights, section 122 shall apply as if the amount of the consideration for the disposal were a capital distribution received by him from the company in respect of the first-mentioned shares, and as if that person had, instead of disposing of the rights, disposed of an interest in those shares.

(2) This section shall apply in relation to rights obtained in respect of debentures of a company as it applies in relation to rights obtained in respect of shares in a company.

Close companies

124 Disposal of shares: relief in respect of income tax consequent on shortfall in distributions.

(1) If in pursuance of section 426 of the Taxes Act (consequences for income tax of apportionment of income etc. of close company) a person is assessed to income tax, then, in the computation of the gain accruing on a disposal by him of any shares forming part of his interest in the company to which the relevant apportionment relates, the amount of the income tax paid by him, so far as attributable to those shares, shall be allowable as a deduction.

(2) Subsection (1) above shall not apply in relation to tax charged in respect of undistributed income which has, before the disposal, been subsequently distributed and is then exempt from tax by virtue of section 427(4) of the Taxes Act or in relation to tax treated as having been paid by virtue of section 426(2)(b) of that Act.

(3) For the purposes of this section the income assessed to tax shall be the highest part of the individual's income for the year of assessment in question, but so that if the highest part of the said income is taken into account under this section in relation to an assessment to tax the next highest part shall be taken into account in relation to any other relevant assessment, and so on.

(4) For the purpose of identifying shares forming part of an interest in a company with shares subsequently disposed of which are of the same class, shares bought at an earlier time shall be deemed to have been disposed of before shares bought at a later time.

125 Shares in close company transferring assets at an undervalue.

(1) If a company which is a close company transfers, or has after 31st March 1982 transferred, an asset to any person otherwise than by way of a bargain made at arm's length and for a consideration of an amount or value less than the market value of the asset, an amount equal to the difference shall be apportioned among the issued shares of the company, and the holders of those shares shall be treated in accordance with the following provisions of this section.

(2) For the purposes of the computation of the gain accruing on the disposal of any of those shares by the person owning them on the date of transfer, an amount equal to the amount so apportioned to that share shall be excluded from the expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal.

(3) If the person owning any of the shares at the date of transfer is itself a close company an amount equal to the amount apportioned to the shares so owned under subsection (1) above to that close company shall be apportioned among the issued shares of that close company, and the holders of those shares shall be treated in accordance with subsection (2) above, and so on through any number of close companies.

(4) This section shall not apply where the transfer of the asset is a disposal to which section 171(1) applies.

(5) In relation to a disposal to which section 35(2) does not apply, subsection (1) above shall have effect with the substitution of " 6th April 1965 " for "31st March 1982".

CHAPTER II

REORGANISATION OF SHARE CAPITAL, CONVERSION OF SECURITIES ETC.

Modifications etc. (not altering text)

C80 Pt. IV Ch. II modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), regs. 1, 39

Reorganisation or reduction of share capital

126 Application of sections 127 to 131.

(1) For the purposes of this section and sections 127 to 131 "reorganisation" means a reorganisation or reduction of a company's share capital, and in relation to the reorganisation—

(a) "original shares" means shares held before and concerned in the reorganisation,

(b) "new holding" means, in relation to any original shares, the shares in and debentures of the company which as a result of the reorganisation represent the original shares (including such, if any, of the original shares as remain).

(2) The reference in subsection (1) above to the reorganisation of a company's share capital includes—

(a) any case where persons are, whether for payment or not, allotted shares in or debentures of the company in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in the company or of any class of shares in the company, and

(b) any case where there are more than one class of share and the rights attached to shares of any class are altered.

(3) The reference in subsection (1) above to a reduction of share capital does not include the paying off of redeemable share capital, and where shares in a company are redeemed by the company otherwise than by the issue of shares or debentures (with or without other consideration) and otherwise than in a liquidation, the shareholder shall be treated as disposing of the shares at the time of the redemption.

127 Equation of original shares and new holding.

Subject to sections 128 to 130, a reorganisation shall not be treated as involving any disposal of the original shares or any acquisition of the new holding or any part of it, but the original shares (taken as a single asset) and the new holding (taken as a single asset) shall be treated as the same asset acquired as the original shares were acquired.

Modifications etc. (not altering text)

C81 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C82 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C83 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

128 Consideration given or received by holder.

(1) Subject to subsection (2) below, where, on a reorganisation, a person gives or becomes liable to give any consideration for his new holding or any part of it, that consideration shall in relation to any disposal of the new holding or any part of it be treated as having been given for the original shares, and if the new holding or part of it is disposed of

with a liability attaching to it in respect of that consideration, the consideration given for the disposal shall be adjusted accordingly.

(2) There shall not be treated as consideration given for the new holding or any part of it—

(a) any surrender, cancellation or other alteration of the original shares or of the rights attached thereto, or

(b) any consideration consisting of any application, in paying up the new holding or any part of it, of assets of the company or of any dividend or other distribution declared out of those assets but not made,

and, in the case of a reorganisation on or after 10th March 1981, any consideration given for the new holding or any part of it otherwise than by way of a bargain made at arm's length shall be disregarded to the extent that its amount or value exceeds the relevant increase in value; and for this purpose "the relevant increase in value" means the amount by which the market value of the new holding immediately after the reorganisation exceeds the market value of the original shares immediately before the reorganisation.

(3) Where on a reorganisation a person receives (or is deemed to receive), or becomes entitled to receive, any consideration, other than the new holding, for the disposal of an interest in the original shares, and in particular—

(a) where under section 122 he is to be treated as if he had in consideration of a capital distribution disposed of an interest in the original shares, or

(b) where he receives (or is deemed to receive) consideration from other shareholders in respect of a surrender of rights derived from the original shares,

he shall be treated as if the new holding resulted from his having for that consideration disposed of an interest in the original shares (but without prejudice to the original shares and the new holding being treated in accordance with section 127 as the same asset).

(4) Where for the purpose of subsection (3) above it is necessary in computing the gain or loss accruing on the disposal of the interest in the original shares mentioned in that subsection to apportion the cost of acquisition of the original shares between what is disposed of and what is retained, the apportionment shall be made in the like manner as under section 129.

Modifications etc. (not altering text)

C81 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C82 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C83 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

129 Part disposal of new holding.

Subject to section 130(2), where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of any part of the new holding it is necessary to apportion the cost of acquisition of any of the original shares between what is disposed of and what is retained, the apportionment shall be made by reference

to market value at the date of the disposal (with such adjustment of the market value of any part of the new holding as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

Modifications etc. (not altering text)

C81 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C82 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C83 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

130 Composite new holdings.

(1) This section shall apply to a new holding—

(a) if it consists of more than one class of shares in or debentures of the company and one or more of those classes is of shares or debentures which, at any time not later than the end of the period of 3 months beginning with the date on which the reorganisation took effect, or of such longer period as the Board may by notice allow, had quoted market values on a recognised stock exchange in the United Kingdom or elsewhere, or

(b) if it consists of more than one class of rights of unit holders and one or more of those classes is of rights the prices of which were published daily by the managers of the scheme at any time not later than the end of that period of 3 months (or longer if so allowed).

(2) Where for the purpose of computing the gain or loss accruing to a person from the acquisition and disposal of the whole or any part of any class of shares or debentures or rights of unit holders forming part of a new holding to which this section applies it is necessary to apportion costs of acquisition between what is disposed of and what is retained, the cost of acquisition of the new holding shall first be apportioned between the entire classes of shares or debentures or rights of which it consists by reference to market value on the first day (whether that day fell before the reorganisation took effect or later) on which market values or prices were quoted or published for the shares, debentures or rights as mentioned in subsection (1)(a) or (1)(b) above (with such adjustment of the market value of any class as may be required to offset any liability attaching thereto but forming part of the cost to be apportioned).

(3) For the purposes of this section the day on which a reorganisation involving the allotment of shares or debentures or unit holders' rights takes effect is the day following the day on which the right to renounce any allotment expires.

Modifications etc. (not altering text)

C81 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C82 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C83 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

131 Indexation allowance.

(1) This section applies where—

(a) by virtue of section 127, on a reorganisation the original shares (taken as a single asset) and the new holding (taken as a single asset) fall to be treated as the same asset acquired as the original shares were acquired; and

(b) on the reorganisation, a person gives or becomes liable to give any consideration for his new holding or any part of it.

(2) Where this section applies, so much of the consideration referred to in subsection (1)(b) above as, on a disposal to which section 53 applies of the new holding, will, by virtue of section 128(1), be treated as having been given for the original shares, shall be treated for the purposes of section 54 as an item of relevant allowable expenditure incurred not at the time the original shares were acquired but at the time the person concerned gave or became liable to give the consideration (and, accordingly, section 54(4) shall not apply in relation to that item of expenditure).

Modifications etc. (not altering text)

C81 Ss. 127-131 excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

C82 Ss. 127-131 restricted by The Personal Equity Plan Regulations 1989 (S.I. 1989/469), reg. 27(3) (as substituted (with effect in accordance with reg. 1(3) of the amending S.I.) by S.I. 1998/1869, regs. 1(1), 12)

C83 Ss. 127-131 restricted (6.4.1999) by The Individual Savings Account Regulations 1998 (S.I. 1998/1870), regs. 1, **34(4)**

Conversion of securities

132 Equation of converted securities and new holding.

(1) Sections 127 to 131 shall apply with any necessary adaptations in relation to the conversion of securities as they apply in relation to a reorganisation (that is to say, a reorganisation or reduction of a company's share capital).

(2) This section has effect subject to sections 133 and 134.

(3) For the purposes of this section and section 133—

(a) "conversion of securities" includes **[**F184any of the following, whether effected by a transaction or occurring in consequence of the operation of the terms of any security or of any debenture which is not a security, that is to say**]**—

(i) a conversion of securities of a company into shares in the company, and

[F185(ia) a conversion of a security which is not a qualifying corporate bond into a security of the same company which is such a bond, and

(ib) a conversion of a qualifying corporate bond into a security which is a security of the same company but is not such a bond, and**]**

(ii) a conversion at the option of the holder of the securities converted as an alternative to the redemption of those securities for cash, and

(iii) any exchange of securities effected in pursuance of any enactment (including an enactment passed after this Act) which provides for the compulsory acquisition of any shares or securities and the issue of securities or other securities instead,

(b) "security" includes any loan stock or similar security whether of the Government of the United Kingdom or of any other government, or of any public or local authority in the United Kingdom or elsewhere, or of any company, and whether secured or unsecured.

[F186(4) In subsection (3)(a)(ia) above the reference to the conversion of a security of a company into a qualifying corporate bond includes a reference to—

(a) any such conversion of a debenture of that company that is deemed to be a security for the purposes of section 251 as produces a security of that company which is a qualifying corporate bond; and

(b) any such conversion of a security of that company, or of a debenture that is deemed to be a security for those purposes, as produces a debenture of that company which, when deemed to be a security for those purposes, is such a bond.

(5) In subsection (3)(a)(ib) above the reference to the conversion of a qualifying corporate bond into a security of the same company which is not such a bond includes a reference to any conversion of a qualifying corporate bond which produces a debenture which—

(a) is not a security; and

(b) when deemed to be a security for the purposes of section 251, is not such a bond.**]**

Textual Amendments

F184 Words in s. 132(3)(a) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(2)(a)**

F185 S. 132(3)(ia)(ib) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(2)(b)**

F186 S. 132(4)(5) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(3)**

Modifications etc. (not altering text)

C84 S. 132 applied (retrospective to 31.12.1995) by Finance Act 1996 (c. 8), **s. 203(10)**

133 Premiums on conversion of securities.

(1) This section applies where, on a conversion of securities, a person receives, or becomes entitled to receive, any sum of money ("the premium") which is by way of consideration (in addition to his new holding) for the disposal of the converted securities.

(2) If F187... F187... the premium is small, as compared with the value of the converted securities,—

(a) receipt of the premium shall not be treated for the purposes of this Act as a disposal of part of the converted securities, and

(b) the premium shall be deducted from any expenditure allowable under this Act as a deduction in computing a gain or loss on the disposal of the new holding by the person receiving or becoming entitled to receive the premium.

F188(3) . . . . . .

(4) Where the allowable expenditure is less than the premium (or is nil)—

(a) **[**F189subsection (2)**]** above shall not apply, and

(b) if the recipient so elects (and there is any allowable expenditure)—

(i) the amount of the premium shall be reduced by the amount of the allowable expenditure, and

(ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the conversion, or on any subsequent occasion.

(5) In subsection (4) above "allowable expenditure" means expenditure which immediately before the conversion was attributable to the converted securities under paragraphs (a) and (b) of section 38(1).

Textual Amendments

F187 Words in s. 133(2) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 53(1), **Sch. 41 Pt. V(10)**

F188 S. 133(3) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 53(2), **Sch. 41 Pt. V(10)**

F189 Words in s. 133(4)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 53(3)**

134 Compensation stock.

(1) This section has effect where gilt-edged securities are exchanged for shares in pursuance of any enactment (including an enactment passed after this Act) which provides for the compulsory acquisition of any shares and the issue of gilt-edged securities instead.

(2) The exchange shall not constitute a conversion of securities within section 132 and shall be treated as not involving any disposal of the shares by the person from whom they were compulsorily acquired but—

(a) there shall be calculated the gain or loss that would have accrued to him if he had then disposed of the shares for a consideration equal to the value of the shares as determined for the purpose of the exchange, and

(b) on a subsequent disposal of the whole or part of the gilt-edged securities by the person to whom they were issued—

(i) there shall be deemed to accrue to him the whole or a corresponding part of the gain or loss mentioned in paragraph (a) above, and

(ii) section 115(1) shall not have effect in relation to any gain or loss that is deemed to accrue as aforesaid.

(3) Where a person to whom gilt-edged securities of any kind were issued as mentioned in subsection (1) above disposes of securities of that kind, the securities of which he disposes—

(a) shall, so far as possible, be identified with securities which were issued to him as mentioned in subsection (1) above rather than with other securities of that kind, and

(b) subject to paragraph (a) above, shall be identified with securities issued at an earlier time rather than those issued at a later time.

(4) Subsection (2)(b) above shall not apply to any disposal falling within the provisions of section 58(1), 62(4) or 171(1) but a person who has acquired the securities on a disposal falling within those provisions (and without there having been a previous disposal not falling within those provisions or a devolution on death) shall be treated for the purposes of subsections (2)(b) and (3) above as if the securities had been issued to him.

(5) Where the gilt-edged securities to be exchanged for any shares are not issued until after the date on which the shares are compulsorily acquired but on that date a right to the securities is granted, this section shall have effect as if the exchange had taken place on that date, as if references to the issue of the securities and the person to whom they were issued were references to the grant of the right and the person to whom it was granted and references to the disposal of the securities included references to disposals of the rights.

(6) In this section "shares" includes securities within the meaning of section 132.

(7) This section does not apply where the compulsory acquisition took place before 7th April 1976.

Company reconstructions and amalgamations

135 Exchange of securities for those in another company.

(1) Subsection (3) below has effect where a company ("company A") issues shares or debentures to a person in exchange for shares in or debentures of another company ("company B") and—

(a) company A holds, or in consequence of the exchange will hold, more than one-quarter of the ordinary share capital (as defined in section 832(1) of the Taxes Act) of company B, or

(b) company A issues the shares or debentures in exchange for shares as the result of a general offer—

(i) which is made to members of company B or any class of them (with or without exceptions for persons connected with company A), and

(ii) which is made in the first instance on a condition such that if it were satisfied company A would have control of company B **[**[F190]or

(c) company A holds, or in consequence of the exchange will hold, the greater part of the voting power in company B**]**

(2) Subsection (3) below also has effect where under section 136 persons are to be treated as exchanging shares or debentures held by them in consequence of the arrangement there mentioned.

(3) Subject to sections 137 and 138, sections 127 to 131 shall apply with any necessary adaptations as if the 2 companies mentioned in subsection (1) above or, as the case may be, in section 136 were the same company and the exchange were a reorganisation of its share capital.

Textual Amendments

F190 Words in s. 135(1) inserted (*retrosp.*) by 1992 c. 48, **s. 35(1)**

Modifications etc. (not altering text)

C85 S. 135(3) excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 7(1)(a)** (with Sch. 7 para. 9(1))

136 Reconstruction or amalgamation involving issue of securities.

(1) Where—

(a) an arrangement between a company and the persons holding shares in or debentures of the company, or any class of such shares or debentures, is entered into for the purposes of or in connection with a scheme of reconstruction or amalgamation, and

(b) under the arrangement another company issues shares or debentures to those persons in respect of and in proportion to (or as nearly as may be in proportion to) their holdings of shares in or debentures of the first-mentioned company, but the shares in or debentures of the first-mentioned company are either retained by those persons or cancelled,

then those persons shall be treated as exchanging the first-mentioned shares or debentures for those held by them in consequence of the arrangement (any shares or debentures retained being for this purpose regarded as if they had been cancelled and replaced by a new issue), and subsections (2) and (3) of section 135 shall apply accordingly.

(2) In this section "scheme of reconstruction or amalgamation" means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies, and references to shares or debentures being retained include their being retained with altered rights or in an altered form whether as the result of reduction, consolidation, division or otherwise.

(3) This section, and section 135(2), shall apply in relation to a company which has no share capital as if references to shares in or debentures of a company included references to any interests in the company possessed by members of the company.

137 Restriction on application of sections 135 and 136.

(1) Subject to subsection (2) below, and section 138, neither section 135 nor section 136 shall apply to any issue by a company of shares in or debentures of that company in exchange for or in respect of shares in or debentures of another company unless the exchange, reconstruction or amalgamation in question is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to capital gains tax or corporation tax.

(2) Subsection (1) above shall not affect the operation of section 135 or 136 in any case where the person to whom the shares or debentures are issued does not hold more than 5 per cent. of, or of any class of, the shares in or debentures of the second company mentioned in subsection (1) above.

(3) For the purposes of subsection (2) above shares or debentures held by persons connected with the person there mentioned shall be treated as held by him.

(4) If any tax assessed on a person (the chargeable person) by virtue of subsection (1) above is not paid within 6 months from the date when it is payable, any other person who—

(a) holds all or any part of the shares or debentures that were issued to the chargeable person, and

(b) has acquired them without there having been, since their acquisition by the chargeable person, any disposal of them not falling within section 58(1) or 171,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable person) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable person.

(5) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (4) above—

(a) for the words "the date when it is payable" there shall be substituted " the date determined under subsection (4A) below ";

(b) for the words "the time when the tax became payable" there shall be substituted " that date "; and

(c) for the words "a sum" onwards there shall be substituted " from the chargeable person a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount ";

and after that subsection there shall be inserted—

"(4A) The date referred to in subsection (4) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the chargeable person; and

(b) the date when the assessment was made on the chargeable person."

(6) In this section references to shares or debentures include references to any interests or options to which this Chapter applies by virtue of section 136(3) or 147.

Commencement Information

I2 S. 137(5):30.9.1993 appointed for the purposes of s. 137(5) by S.I. 1992/3066, **art. 2(2)(d)** in force at 30.9.1993 by S.I. 1992/3066, **art. 2(2)(d)**

138 Procedure for clearance in advance.

(1) Section 137 shall not affect the operation of section 135 or 136 in any case where, before the issue is made, the Board have, on the application of either company mentioned in section 137(1), notified the company that the Board are satisfied that the exchange, reconstruction or amalgamation will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in section 137(1).

(2) Any application under subsection (1) above shall be in writing and shall contain particulars of the operations that are to be effected and the Board may, within 30 days of the receipt of the application or of any further particulars previously required under this subsection, by notice require the applicant to furnish further particulars for the purpose of enabling the Board to make their decision; and if any such notice is not complied with within 30 days or such longer period as the Board may allow, the Board need not proceed further on the application.

(3) The Board shall notify their decision to the applicant within 30 days of receiving the application or, if they give a notice under subsection (2) above, within 30 days of the notice being complied with.

(4) If the Board notify the applicant that they are not satisfied as mentioned in subsection (1) above or do not notify their decision to the applicant within the time required by subsection (3) above, the applicant may within 30 days of the notification or of that time require the Board to transmit the application, together with any notice given and further particulars furnished under subsection (2) above, to the Special Commissioners; and in that event any notification by the Special Commissioners shall have effect for the purposes of subsection (1) above as if it were a notification by the Board.

(5) If any particulars furnished under this section do not fully and accurately disclose all facts and considerations material for the decision of the Board or the Special Commissioners, any resulting notification that the Board or Commissioners are satisfied as mentioned in subsection (1) above shall be void.

[F191 138A Use of earn-out rights for exchange of securities.

(1) For the purposes of this section an earn-out right is so much of any right conferred on any person ("the seller") as—

(a) constitutes the whole or any part of the consideration for the transfer by him of shares in or debentures of a company ("the old securities");

(b) consists in a right to be issued with shares in or debentures of another company ("the new company");

(c) is such that the value or quantity of the shares or debentures to be issued in pursuance of the right ("the new securities") is unascertainable at the time when the right is conferred; and

(d) is not capable of being discharged in accordance with its terms otherwise than by the issue of the new securities.

(2) Where—

(a) there is an earn-out right,

(b) the exchange of the old securities for the earn-out right is an exchange to which section 135 would apply, in a manner unaffected by section 137, if the earn-out right were an ascertainable amount of shares in or debentures of the new company, and

(c) the seller elects under this section for the earn-out right to be treated as a security of the new company,

this Act shall have effect, in the case of the seller and every other person who from time to time has the earn-out right, in accordance with the assumptions specified in subsection (3) below.

(3) Those assumptions are—

(a) that the earn-out right is a security within the definition in section 132;

(b) that the security consisting in the earn-out right is a security of the new company and is incapable of being a qualifying corporate bond for the purposes of this Act;

(c) that references in this Act (including those in this section) to a debenture include references to a right that is assumed to be a security in accordance with paragraph (a) above; and

(d) that the issue of shares or debentures in pursuance of such a right constitutes the conversion of the right, in so far as it is discharged by the issue, into the shares or debentures that are issued.

(4) For the purposes of this section where—

(a) any right which is assumed, in accordance with this section, to be a security of a company ("the old right") is extinguished,

(b) the whole of the consideration for the extinguishment of the old right consists in another right ("the new right") to be issued with shares in or debentures of that company,

(c) the new right is such that the value or quantity of the shares or debentures to be issued in pursuance of the right ("the replacement securities") is unascertainable at the time when the old right is extinguished,

(d) the new right is not capable of being discharged in accordance with its terms otherwise than by the issue of the replacement securities, and

(e) the person on whom the new right is conferred elects under this section for it to be treated as a security of that company,

the assumptions specified in subsection (3) above shall have effect in relation to the new right, in the case of that person and every other person who from time to time has the new right, as they had effect in relation to the old right.

(5) An election under this section in respect of any right must be made, by a notice given to an officer of the Board—

(a) in the case of an election by a company within the charge to corporation tax, within the period of two years from the end of the accounting period in which the right is conferred; and

(b) in any other case, on or before the first anniversary of the 31st January next following the year of assessment in which that right is conferred.

(6) An election under this section shall be irrevocable.

(7) Subject to subsections (8) to (10) below, where any right to be issued with shares in or debentures of a company is conferred on any person, the value or quantity of the shares or debentures to be issued in pursuance of that right shall be taken for the purposes of this section to be unascertainable at a particular time if, and only if—

(a) it is made referable to matters relating to any business or assets of one or more relevant companies; and

(b) those matters are uncertain at that time on account of future business or future assets being included in the business or assets to which they relate.

(8) Where a right to be issued with shares or debentures is conferred wholly or partly in consideration for the transfer of other shares or debentures or the extinguishment of

any right, the value and quantity of the shares or debentures to be issued shall not be taken for the purposes of this section to be unascertainable in any case where, if—

(a) the transfer or extinguishment were a disposal, and

(b) a gain on that disposal fell to be computed in accordance with this Act,

the shares or debentures to be issued would, in pursuance of section 48, be themselves regarded as, or as included in, the consideration for the disposal.

(9) Where any right to be issued with shares in or debentures of a company comprises an option to choose between shares in that company and debentures of that company, the existence of that option shall not, by itself, be taken for the purposes of this section either—

(a) to make unascertainable the value or quantity of the shares or debentures to be issued; or

(b) to prevent the requirements of subsection (1)(b) and (d) or (4)(b) and (d) above from being satisfied in relation to that right.

(10) For the purposes of this section the value or quantity of shares or debentures shall not be taken to be unascertainable by reason only that it has not been fixed if it will be fixed by reference to the other and the other is ascertainable.

(11) In subsection (7) above "relevant company", in relation to any right to be issued with shares in or debentures of a company, means—

(a) that company or any company which is in the same group of companies as that company; or

(b) the company for whose shares or debentures that right was or was part of the consideration, or any company in the same group of companies as that company;

and in this subsection the reference to a group of companies shall be construed in accordance with section 170(2) to (14).**]**

Textual Amendments

F191 S. 138A inserted (retrospectively) by Finance Act 1997 (c. 16), **s. 89(1)(2)** (with s. 89(3)-(8))

139 Reconstruction or amalgamation involving transfer of business.

(1) Subject to the provisions of this section, where—

(a) any scheme of reconstruction or amalgamation involves the transfer of the whole or part of a company's business to another company, and

(b) at the time of the transfer both the companies are resident in the United Kingdom, and

(c) the first-mentioned company receives no part of the consideration for the transfer (otherwise than by the other company taking over the whole or part of the liabilities of the business),

then, so far as relates to corporation tax on chargeable gains, the 2 companies shall be treated as if any assets included in the transfer were acquired by the one company from the other company for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to the company making the disposal, and for the purposes of Schedule 2 the acquiring company shall be treated as if the respective acquisitions of the assets by the other company had been the acquiring company's acquisition of them.

(2) This section does not apply in relation to an asset which, until the transfer, formed part of trading stock of a trade carried on by the company making the disposal, or in relation to an asset which is acquired as trading stock for the purposes of a trade carried on by the company acquiring the asset.

Section 170(1) applies for the purposes of this subsection.

F192(3) . . . . . .

(4) This section does not apply in the case of a transfer of the whole or part of a company's business to a unit trust scheme to which section 100(2) applies or which is an authorised unit trust or to an investment trust **[**F193or a venture capital trust**]**.

(5) This section does not apply unless the reconstruction or amalgamation is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to corporation tax, capital gains tax or income tax; but the foregoing provisions of this subsection shall not affect the operation of this section in any case where, before the transfer, the Board have, on the application of the acquiring company, notified the company that the Board are satisfied that the reconstruction or amalgamation will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as aforesaid.

Subsections (2) to (5) of section 138 shall have effect in relation to this subsection as they have effect in relation to subsection (1) of that section.

(6) Where, if the company making the disposal had not been wound up, tax could have been assessed on it by virtue of subsection (5) above, that tax may be assessed and charged (in the name of the company making the disposal) on the company to which the disposal is made.

(7) If any tax assessed on a company ("the chargeable company") by virtue of subsection (5) or (6) above is not paid within 6 months from the date when it is payable, any other person who—

(a) holds all or any part of the assets in respect of which the tax is charged; and

(b) either is the company to which the disposal was made or has acquired the assets without there having been any subsequent disposal not falling within this section or section 171,

may, within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or, as the case may be, a corresponding part of the unpaid tax; and a person paying any amount of tax under this section shall be entitled to recover a sum of that amount from the chargeable company.

(8) With respect to chargeable gains accruing in chargeable periods ending after such day as the Treasury may by order appoint, in subsection (7) above—

(a) for the words "when it is payable" there shall be substituted " when it is due and payable or, if later, the date when the assessment is made on the company ";

(b) for the words "the time when the tax became payable" there shall be substituted " the later of those dates "; and

(c) for the words "a sum" onwards there shall be substituted " from the chargeable company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount ".

(9) In this section "scheme of reconstruction or amalgamation" means a scheme for the reconstruction of any company or companies or the amalgamation of any 2 or more companies.

Textual Amendments

F192 S. 139(3) repealed (with effect in accordance with s. 251(1)(a)(5) of the amending Act) by Finance Act 1994 (c. 9), s. 251(5), **Sch. 26 Pt. VIII(1)**

F193 Words in s. 139(4) inserted (with application in accordance with s. 134(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 134(1)**

Modifications etc. (not altering text)

C86 S. 139 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

C87 S. 139 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

Commencement Information

I3 S. 139(8): 30.9.1993 appointed for the purposes of s. 139(8) by S.I. 1992/3066, **art. 2(2)(d)**

140 Postponement of charge on transfer of assets to non-resident company.

(1) This section applies where a company resident in the United Kingdom carries on a trade outside the United Kingdom through a branch or agency and—

(a) that trade, or part of it, together with the whole assets of the company used for the purposes of the trade or part (or together with the whole of those assets other than cash) is transferred to a company not resident in the United Kingdom;

(b) the trade or part is so transferred wholly or partly in exchange for securities consisting of shares, or of shares and loan stock, issued by the transferee company to the transferor company;

(c) the shares so issued, either alone or taken together with any other shares in the transferee company already held by the transferor company, amount in all to not less than one quarter of the ordinary share capital of the transferee company; and

(d) either no allowable losses accrue to the transferor company on the transfer or the aggregate of the chargeable gains so accruing exceeds the aggregate of the allowable losses so accruing;

and also applies in any case where section 268A of the [M37]Income and Corporation Taxes Act 1970 applied unless the deferred gain had been wholly taken into account in accordance with that section before the coming into force of this section.

Section 170(1) shall apply for the purposes of this section.

(2) In any case to which this section applies the transferor company may claim that this Act shall have effect in accordance with the following provisions.

(3) Any allowable losses accruing to the transferor company on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses and—

(a) if the securities are the whole consideration for the transfer, the whole of that gain shall be treated as not accruing to the transferor company on the transfer but an equivalent amount ("the deferred gain") shall be brought into account in accordance with subsections (4) and (5) below;

(b) if the securities are not the whole of that consideration—

(i) paragraph (a) above shall apply to the appropriate proportion of that gain; and

(ii) the remainder shall be treated as accruing to the transferor company on the transfer.

In paragraph (b)(i) above "the appropriate proportion" means the proportion that the market value of the securities at the time of the transfer bears to the market value of the whole of the consideration at that time.

(4) If at any time after the transfer the transferor company disposes of the whole or part of the securities held by it immediately before that time, the consideration received by it on the disposal shall be treated as increased by the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (5) below.

In this subsection "the appropriate proportion" means the proportion that the market value of the part of the securities disposed of bears to the market value of the securities held immediately before the disposal.

(5) If at any time within 6 years after the transfer the transferee company disposes of the whole or part of the relevant assets held by it immediately before that time there shall be deemed to accrue to the transferor company as a chargeable gain on that occasion the whole or the appropriate proportion of the deferred gain so far as not already taken into account under this subsection or subsection (4) above.

In this subsection "relevant assets" means assets the chargeable gains on which were taken into account in arriving at the deferred gain and "the appropriate proportion" means the proportion which the chargeable gain so taken into account in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(6) There shall be disregarded—

(a) for the purposes of subsection (4) above any disposal to which section 171 applies; and

(b) for the purposes of subsection (5) above any disposal to which that section would apply apart from section 170(2)(a) and (9);

and where a person acquires securities or an asset on a disposal disregarded for the purposes of subsection (4) or (5) above (and without there having been a previous disposal not so disregarded) a disposal of the securities or asset by that person shall be treated as a disposal by the transferor or, as the case may be, transferee company.

F194[(6A) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140C.]

(7) If in the case of any such transfer as was mentioned in section 268(1) of the M38Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section chargeable gains which by virtue of section 268(2) and 268A(8) of that Act were treated as not having accrued to the transferor company, subsection (4) above

shall (without any claim in that behalf) apply to the aggregate of those gains as if references to the deferred gain were references to that aggregate and as if references to the transfer and the securities were references to the transfer and the shares, or shares and loan stock, mentioned in section 268(1).

(8) If in the case of any such transfer as was mentioned in section 268A(1) of the [M39]Income and Corporation Taxes Act 1970 there were immediately before the coming into force of this section deferred gains which by virtue of section 268A(3) were treated as not having accrued to the transferor company, subsections (4) and (5) above shall (without any claim in that behalf) apply to those deferred gains as they apply to gains deferred by virtue of subsection (3) above (as if the references to the transfer and the securities were references to the transfer and securities mentioned in section 268A(1)).

Textual Amendments

F194 S. 140(6A) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(4)**

Marginal Citations

M37 1970 c. 10.
M38 1970 c. 10.
M39 1970 c. 10.

[F195][Transfers concerning companies of different member States]

Textual Amendments

F195 Cross heading inserted (*retrosp.*) by 1992 c. 48, **s.44**

[F196140A Transfer of a UK trade.

(1) This section applies where—

(a) a qualifying company resident in one member State (company A)

transfers the whole or part of a trade carried on by it in the United Kingdom to a qualifying company resident in another member State (company B),

(b) the transfer is wholly in exchange for securities issued by company B to company A,

(c) a claim is made under this section by company A and company B,

(d) section 140B does not prevent this section applying, and

(e) the appropriate condition is met in relation to company B immediately after the time of the transfer.

(2) Where immediately after the time of the transfer company B is not resident in the United Kingdom, the appropriate condition is that were it to dispose of the assets included in the transfer any chargeable gains accruing to it on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 10(3).

(3) Where immediately after the time of the transfer company B is resident in the United Kingdom, the appropriate condition is that none of the assets included in the transfer is one in respect of which, by virtue of the asset being of a description specified in

double taxation relief arrangements, the company falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to it on a disposal.

(4) Where this section applies—

(a) the two companies shall be treated, so far as relates to corporation tax on chargeable gains, as if any assets included in the transfer were acquired by company B from company A for a consideration of such amount as would secure that on the disposal by way of transfer neither a gain nor a loss would accrue to company A;

(b) section 25(3) shall not apply to any such assets by reason of the transfer (if it would apply apart from this paragraph).

(5) For the purposes of subsection (1)(a) above, a company shall be regarded as resident in a member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

(6) For the purposes of subsection (5) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

(7) In this section—

"qualifying company" means a body incorporated under the law of a member State;

"securities" includes shares.**]**

Textual Amendments

F196 S. 140A inserted (*retrosp.*) by 1992 c. 48, **s.44**

Modifications etc. (not altering text)

C88 S. 140A restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

[F197140B Section 140A: anti-avoidance.

(1) Section 140A shall not apply unless the transfer of the trade or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.

(2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A and company B notified those companies that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.

(3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.**]**

Textual Amendments

F197 S. 140B inserted (*retrosp.*) by 1992 c. 48, **s.44**

[140C F198 Transfer of a non-UK trade.

(1) This section applies where—

(a) a qualifying company resident in the United Kingdom (company A)

transfers to a qualifying company resident in another member State (company B) the whole or part of a trade which, immediately before the time of the transfer, company A carried on in a member State other than the United Kingdom through a branch or agency,

(b) the transfer includes the whole of the assets of company A used for the purposes of the trade or part (or the whole of those assets other than cash),

(c) the transfer is wholly or partly in exchange for securities issued by company B to company A,

(d) the aggregate of the chargeable gains accruing to company A on the transfer exceeds the aggregate of the allowable losses so accruing,

(e) a claim is made under this section by company A, and

(f) section 140D does not prevent this section applying.

(2) In a case where this section applies, this Act shall have effect in accordance with subsection (3) below.

(3) The allowable losses accruing to company A on the transfer shall be set off against the chargeable gains so accruing and the transfer shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses.

(4) No claim may be made under this section as regards a transfer in relation to which a claim is made under section 140.

(5) In a case where this section applies, section 815A of the Taxes Act shall also apply.

(6) For the purposes of subsection (1)(a) above—

(a) a company shall not be regarded as resident in the United Kingdom if it falls to be regarded for the purposes of any double taxation relief arrangements to which the United Kingdom is a party as resident in a territory which is not within any of the member States;

(b) a company shall be regarded as resident in another member State if it is within a charge to tax under the law of the State because it is regarded as resident for the purposes of the charge.

(7) For the purposes of subsection (6)(b) above, a company shall be treated as not within a charge to tax under the law of a member State if it falls to be regarded for the purposes of any double taxation relief arrangements to which the State is a party as resident in a territory which is not within any of the member States.

(8) Section 442(3) of the Taxes Act (overseas business of UK insurance companies) shall be ignored in arriving at the chargeable gains accruing to company A on the transfer, and the allowable losses so accruing, for the purposes of subsections (1)(d) and (3) above.

(9) In this section—

"qualifying company" means a body incorporated under the law of a member State;

"securities" includes shares.**]**

Textual Amendments

F198 S. 140C inserted (*retrosp.*) by 1992 c. 48, **s. 45**

[F199 140D Section 140C: anti-avoidance.

(1) Section 140C shall not apply unless the transfer of the trade or part is effected for bona fide commercial reasons and does not form part of a scheme or arrangements of which the main purpose, or one of the main purposes, is avoidance of liability to income tax, corporation tax or capital gains tax.

(2) Subsection (1) above shall not apply where, before the transfer, the Board have on the application of company A notified that company that the Board are satisfied that the transfer will be effected for bona fide commercial reasons and will not form part of any such scheme or arrangements as are mentioned in that subsection.

(3) Subsections (2) to (5) of section 138 shall have effect in relation to subsection (2) above as they have effect in relation to subsection (1) of that section.**]**

Textual Amendments

F199 S. 140D inserted (*retrosp.*) by 1992 c. 48, **s. 45**

CHAPTER III

MISCELLANEOUS PROVISIONS RELATING TO COMMODITIES, FUTURES, OPTIONS AND OTHER SECURITIES

[F200 142 Capital gains on stock dividends.

(1) This section applies where any share capital to which section 249 of the Taxes Act applies is issued as mentioned in subsection (4), (5) or (6) of that section in respect of shares in the company held by any person.

(2) The case shall not constitute a reorganisation of the company's share capital for the purposes of sections 126 to 128.

(3) The person who acquires the share capital by means of its issue shall (notwithstanding section 17(1)) be treated for the purposes of section 38(1)(a) as having acquired that asset for a consideration equal to the appropriate amount in cash (within the meaning of section 251(2) to (4) of the Taxes Act).**]**

Textual Amendments

F200 S. 142 substituted for ss. 141, 142 (with application in accordance with s. 126(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 126(1)**

143 Commodity and financial futures and qualifying options.

(1) If, apart from section 128 of the Taxes Act, gains arising to any person in the course of dealing in commodity or financial futures or in qualifying options would constitute, for the purposes of the Tax Acts, profits or gains chargeable to tax under Schedule D otherwise than as the profits of a trade, then his outstanding obligations under any futures contract entered into in the course of that dealing and any qualifying option granted or acquired in the course of that dealing shall be regarded as assets to the disposal of which this Act applies.

(2) In subsection (1) above—

(a) "commodity or financial futures" means commodity futures or financial futures which are for the time being dealt in on a recognised futures exchange; and

(b) "qualifying option" means a traded option or financial option as defined in section 144(8).

(3) Notwithstanding the provisions of subsection (2)(a) above, where, otherwise than in the course of dealing on a recognised futures exchange—

(a) an authorised person or listed institution enters into a commodity or financial futures contract with another person, or

(b) the outstanding obligations under a commodity or financial futures contract to which an authorised person or listed institution is a party are brought to an end by a further contract between the parties to the futures contract,

then, except in so far as any gain or loss arising to any person from that transaction arises in the course of a trade, that gain or loss shall be regarded for the purposes of subsection (1) above as arising to him in the course of dealing in commodity or financial futures.

F201(4) . . . . . .

(5) For the purposes of this Act, where, in the course of dealing in commodity or financial futures, a person who has entered into a futures contract closes out that contract by entering into another futures contract with obligations which are reciprocal to those of the first-mentioned contract, that transaction shall constitute the disposal of an asset (namely, his outstanding obligations under the first-mentioned contract) and, accordingly—

(a) any money or money's worth received by him on that transaction shall constitute consideration for the disposal; and

(b) any money or money's worth paid or given by him on that transaction shall be treated as incidental costs to him of making the disposal.

[F202(6) In any case where, in the course of dealing in commodity or financial futures, a person has entered into a futures contract and—

(a) he has not closed out the contract (as mentioned in subsection (5) above), and

(b) he becomes entitled to receive or liable to make a payment, whether under the contract or otherwise, in full or partial settlement of any obligations under the contract,

then, for the purposes of this Act, he shall be treated as having disposed of an asset (namely, that entitlement or liability) and the payment received or made by him shall be treated as consideration for the disposal or, as the case may be, as incidental costs to him of making the disposal.

(7) Section 46 shall not apply to obligations under—

(a) a commodity or financial futures contract which is entered into by a person in the course of dealing in such futures on a recognised futures exchange; or

(b) a commodity or financial futures contract to which an authorised person or listed institution is a party.

(8) In this section—

"authorised person" has the same meaning as in the Financial Services Act 1986, and

"listed institution" has the same meaning as in section 43 of that Act.**]**

Textual Amendments

F201 S. 143(4) repealed (with effect in accordance with s. 95(2) of the amending Act) by Finance Act 1994 (c. 9), s. 95(1), **Sch. 26 Pt. V(9)**

F202 S. 143(6)(7)(8) substituted for s. 143(6) (with effect in accordance with s. 95(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 95(1)**

144 Options and forfeited deposits.

(1) Without prejudice to section 21, the grant of an option, and in particular—

(a) the grant of an option in a case where the grantor binds himself to sell what he does not own, and because the option is abandoned, never has occasion to own, and

(b) the grant of an option in a case where the grantor binds himself to buy what, because the option is abandoned, he does not acquire,

is the disposal of an asset (namely of the option), but subject to the following provisions of this section as to treating the grant of an option as part of a larger transaction.

(2) If an option is exercised, the grant of the option and the transaction entered into by the grantor in fulfilment of his obligations under the option shall be treated as a single transaction and accordingly—

(a) if the option binds the grantor to sell, the consideration for the option is part of the consideration for the sale, and

(b) if the option binds the grantor to buy, the consideration for the option shall be deducted from the cost of acquisition incurred by the grantor in buying in pursuance of his obligations under the option.

(3) The exercise of an option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person, but, if an option is exercised then the acquisition of the option (whether directly from the grantor or not) and the

transaction entered into by the person exercising the option in exercise of his rights under the option shall be treated as a single transaction and accordingly—

(a) if the option binds the grantor to sell, the cost of acquiring the option shall be part of the cost of acquiring what is sold, and

(b) if the option binds the grantor to buy, the cost of the option shall be treated as a cost incidental to the disposal of what is bought by the grantor of the option.

(4) The abandonment of—

(a) a quoted option to subscribe for shares in a company, or

(b) a traded option or financial option, or

(c) an option to acquire assets exercisable by a person intending to use them, if acquired, for the purpose of a trade carried on by him,

shall constitute the disposal of an asset (namely of the option); but the abandonment of any other option by the person for the time being entitled to exercise it shall not constitute the disposal of an asset by that person.

(5) This section shall apply in relation to an option binding the grantor both to sell and to buy as if it were 2 separate options with half the consideration attributed to each.

(6) In this section references to an option include references to an option binding the grantor to grant a lease for a premium, or enter into any other transaction which is not a sale, and references to buying and selling in pursuance of an option shall be construed accordingly.

(7) This section shall apply in relation to a forfeited deposit of purchase money or other consideration money for a prospective purchase or other transaction which is abandoned as it applies in relation to the consideration for an option which binds the grantor to sell and which is not exercised.

(8) In subsection (4) above and sections 146 and 147—

(a) "quoted option" means an option which, at the time of the abandonment or other disposal, is quoted on a recognised stock exchange;

(b) "traded option" means an option which, at the time of the abandonment or other disposal, is **[**F203listed**]** on a recognised stock exchange or a recognised futures exchange; and

(c) "financial option" means an option which is not a traded option, as defined in paragraph (b) above, but which, subject to subsection (9) below—

(i) relates to currency, shares, securities or an interest rate and is granted (otherwise than as agent) by a member of a recognised stock exchange, by an authorised person within the meaning of the M40Financial Services Act 1986 or by a listed institution within the meaning of section 43 of that Act; or

(ii) relates to shares or securities which are dealt in on a recognised stock exchange and is granted by a member of such an exchange, acting as agent; or

(iii) relates to currency, shares, securities or an interest rate and is granted to such an authorised person or institution as is referred to in sub-paragraph (i) above and concurrently and in association with an option falling within that sub-paragraph which is granted by that authorised person or institution to the grantor of the first-mentioned option; or

(iv) relates to shares or securities which are dealt in on a recognised stock exchange and is granted to a member of such an exchange, including such a member acting as agent.

(9) If the Treasury by order so provide, an option of a description specified in the order shall be taken to be within the definition of "financial option" in subsection (8)(c) above.

Textual Amendments

F203 Word in s. 144(8)(b) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 10(2)(a)**

Modifications etc. (not altering text)

C89 S. 144 extended (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 26(2)**

C90 S. 144 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 6(1)(2)** (with Sch. 4 paras. 6(4), 14); S.I. 1994/2189, art. 2, Sch.

Marginal Citations

M40 1986 c. 60.

[F204 144A Cash-settled options.

(1) In any case where—

(a) an option is exercised; and

(b) the nature of the option (or its exercise) is such that the grantor of the option is liable to make, and the person exercising it is entitled to receive, a payment in full settlement of all obligations under the option,

subsections (2) and (3) below shall apply in place of subsections (2) and (3) of section 144.

(2) As regards the grantor of the option—

(a) he shall be treated as having disposed of an asset (namely, his liability to make the payment) and the payment made by him shall be treated as incidental costs to him of making the disposal; and

(b) the grant of the option and the disposal shall be treated as a single transaction and the consideration for the option shall be treated as the consideration for the disposal.

(3) As regards the person exercising the option—

(a) he shall be treated as having disposed of an asset (namely, his entitlement to receive the payment) and the payment received by him shall be treated as the consideration for the disposal;

(b) the acquisition of the option (whether directly from the grantor or not) and the disposal shall be treated as a single transaction and the cost of acquiring the option shall be treated as expenditure allowable as a deduction under section 38(1)(a) from the consideration for the disposal; and

(c) for the purpose of computing the indexation allowance (if any) on the disposal, the cost of the option shall be treated (notwithstanding paragraph (b) above) as incurred when the option was acquired.

(4) In any case where subsections (2) and (3) above would apply as mentioned in subsection (1) above if the reference in that subsection to full settlement included a reference to partial settlement, those subsections and subsections (2) and (3) of section 144 shall both apply but with the following modifications—

(a) for any reference to the grant or acquisition of the option there shall be substituted a reference to the grant or acquisition of so much of the option as relates to the making and receipt of the payment or, as the case may be, the sale or purchase by the grantor; and

(b) for any reference to the consideration for, or the cost of or of acquiring, the option there shall be substituted a reference to the appropriate proportion of that consideration or cost.

(5) In this section "appropriate proportion" means such proportion as may be just and reasonable in all the circumstances.**]**

Textual Amendments

F204 S. 144A inserted (with effect in accordance with s. 96(2) of the amending Act) by Finance Act 1994 (c. 9), **s. 96(1)**

145 Call options: indexation allowance.

(1) This section applies **[**[F205](subject to subsection (1A) below)**]** where, on a disposal to which section 53 applies, the relevant allowable expenditure includes both—

(a) the cost of acquiring an option binding the grantor to sell ("the option consideration"); and

(b) the cost of acquiring what was sold as a result of the exercise of the option ("the sale consideration"),

but does not apply in any case where section 114 applies.

[[F206](1A) In a case where the whole of the expenditure comprised in the option consideration was incurred on or after 1st April 1998, this section applies for the purposes of corporation tax only.**]**

(2) For the purpose of computing the indexation allowance (if any) on the disposal referred to in subsection (1) above—

(a) the option consideration and the sale consideration shall be regarded as separate items of expenditure; and

(b) subsection (4) of section 54 shall apply to neither of those items and, accordingly, they shall be regarded as incurred when the option was acquired and when the sale took place, respectively.

(3) This section has effect notwithstanding section 144, but expressions used in this section have the same meaning as in that section and subsection (5) of that section applies for the purpose of determining the cost of acquiring an option binding the grantor to sell.

Textual Amendments

F205 Words in s. 145(1) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 122(5)**

F206 S. 145(1A) inserted (with effect in accordance with s. 122(6)(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 122(5)**

146 Options: application of rules as to wasting assets.

(1) Section 46 shall not apply—

(a) to a quoted option to subscribe for shares in a company, or

(b) to a traded option, or financial option, or

(c) to an option to acquire assets exercisable by a person intending to use them, if acquired, for the purpose of a trade carried on by him.

(2) In relation to the disposal by way of transfer of an option (other than an option falling within subsection (1)(a) or (b) above) binding the grantor to sell or buy quoted shares or securities, the option shall be regarded as a wasting asset the life of which ends when the right to exercise the option ends, or when the option becomes valueless, whichever is the earlier.

Subsections (5) and (6) of section 144 shall apply in relation to this subsection as they apply in relation to that section.

(3) The preceding provisions of this section are without prejudice to the application of sections 44 to 47 to options not within those provisions.

(4) In this section—

(a) "financial option", "quoted option" and "traded option" have the meanings given by section 144(8), and

(b) "quoted shares or securities" means shares or securities which **[**F207are listed**]** on a recognised stock exchange in the United Kingdom or elsewhere.

Textual Amendments

F207 Words in s. 146(4)(b) substituted (with effect in accordance with Sch. 38 para. 11(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 11(1)**

147 Quoted options treated as part of new holdings.

(1) If a quoted option to subscribe for shares in a company is dealt in (on the stock exchange where it is quoted) within 3 months after the taking effect, with respect to the company granting the option, of any reorganisation, reduction, conversion or amalgamation to which Chapter II of this Part applies, or within such longer period as the Board may by notice allow—

(a) the option shall, for the purposes of that Chapter be regarded as the shares which could be acquired by exercising the option, and

(b) section 272(3) shall apply for determining its market value.

(2) In this section "quoted option" has the meaning given by section 144(8).

148 Traded options: closing purchases.

(1) This section applies where a person ("the grantor") who has granted a traded option ("the original option") closes it out by acquiring a traded option of the same description ("the second option").

(2) Any disposal by the grantor involved in closing out the original option shall be disregarded for the purposes of capital gains tax or, as the case may be, corporation tax on chargeable gains.

(3) The incidental costs to the grantor of making the disposal constituted by the grant of the original option shall be treated for the purposes of the computation of the gain as increased by an amount equal to the aggregate of—

(a) the amount or value of the consideration, in money or money's worth, given by him or on his behalf wholly and exclusively for the acquisition of the second option, and

(b) the incidental costs to him of that acquisition.

(4) In this section "traded option" has the meaning given by section 144(8).

149 Rights to acquire qualifying shares.

(1) This section applies where on or after 25th July 1991 (the day on which the [M41]Finance Act 1991 was passed) a building society confers—

(a) on its members, or

(b) on any particular class or description of its members,

any rights to acquire, in priority to other persons, shares in the society which are qualifying shares.

(2) Any such right so conferred shall be regarded for the purposes of capital gains tax as an option granted to, and acquired by, the member concerned for no consideration and having no value at the time of that grant and acquisition.

(3) In this section—

"member" includes a former member, and

"qualifying share" has the same meaning as in section 117(4).

Marginal Citations

M41 1991 c. 31.

[F208149A[F209Share option schemes.]]

(1) This section applies where—

(a) an option is granted on or after 16th March 1993,

(b) the option consists of a right to acquire shares in a body corporate and is obtained **[**[F210]by an individual by reason of his office or employment as a director or employee of that or any other body corporate**]**, and

(c) section 17(1) would (apart from this section) apply for the purposes of calculating the consideration for the grant of the option.

(2) **[**F211Both the grantor of the option and the person to whom the option is granted**]** shall be treated for the purposes of this Act as if section 17(1) did not apply for the purposes of calculating the consideration and, accordingly, as if the amount or value of the consideration was its actual amount or value.

(3) Where the option is granted wholly or partly in recognition of services or past services in any office or employment, the value of those services shall not be taken into account in calculating the actual amount or value of the consideration.

F212(4) . . . . . .**]**

Textual Amendments

F208 S. 149A inserted (27.7.1993) by 1993 c. 34, **s.104**

F209 S. 149A heading substituted (with effect in accordance with s. 111(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 111(5)**

F210 Words in s. 149A(1)(b) substituted (with effect in accordance with s. 111(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 111(2)**

F211 Words in s. 149A(2) substituted (with effect in accordance with s. 111(6) of the amending Act) by Finance Act 1996 (c. 8), **s. 111(3)**

F212 S. 149A(4) repealed (with effect in accordance with s. 111(6) of the amending Act) by Finance Act 1996 (c. 8), s. 111(4), **Sch. 41 Pt. V(5)**

[F213149B Employee incentive schemes: conditional interests in shares.

(1) Where—

(a) an individual has acquired an interest in any shares or securities which is only conditional,

(b) that interest is one which for the purposes of section 140A of the Taxes Act is taken to have been acquired by him as a director or employee of a company, and

(c) by virtue of section 17(1)(b) the acquisition of that interest would, apart from this section, be an acquisition for a consideration equal to the market value of the interest,

section 17 shall not apply for calculating the consideration.

(2) Instead, the consideration for the acquisition shall be taken (subject to section 120) to be equal to the actual amount or value of the consideration given for that interest as computed in accordance with section 140B of the Taxes Act.

(3) This section shall apply in relation only to the individual making the acquisition and, accordingly, shall be disregarded in calculating the consideration received by the person from whom the interest is acquired.

(4) Expressions used in this section and in section 140A of the Taxes Act have the same meanings in this section as in that section.**]**

Textual Amendments

F213 S. 149B inserted (with effect in accordance with s. 54(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 54(5)**

150 Business expansion schemes.

(1) In this section "relief" means relief under Chapter III of Part VII of the Taxes Act, Schedule 5 to the [M42]Finance Act 1983 ("the 1983 Act") or Chapter II of Part IV of the [M43]Finance Act 1981 ("the 1981 Act") and "eligible shares" has the meaning given by section 289(4) of the Taxes Act **[**[F214]and references in this section to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued before 1st January 1994**]**.

(2) A gain or loss which accrues to an individual on the disposal of any shares issued after 18th March 1986 in respect of which relief has been given to him and not withdrawn shall not be a chargeable gain or allowable loss for the purposes of capital gains tax.

(3) The sums allowable as deductions from the consideration in the computation for the purposes of capital gains tax of the gain or loss accruing to an individual on the disposal of shares issued before 19th March 1986 in respect of which relief has been given and not withdrawn shall be determined without regard to that relief, except that where those sums exceed the consideration they shall be reduced by an amount equal to—

(a) the amount of that relief; or

(b) the excess,

whichever is the less, but the foregoing provisions of this subsection shall not apply to a disposal falling within section 58(1).

(4) Any question—

(a) as to which of any shares **[**[F215]acquired by an individual**]** at different times, being shares in respect of which relief has been given and not withdrawn, a disposal relates **[**[F216]to**]**, or

(b) whether a disposal relates to shares in respect of which relief has been given and not withdrawn or to other shares,

shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act, or section 57 of the [M44]Finance Act 1981 if the relief has only been given under that Act; and Chapter I of this Part shall have effect subject to the foregoing provisions of this subsection.

(5) **[**[F217]Sections 104, 105 and 106A do not apply**]** to shares in respect of which relief has been given and not withdrawn.

(6) Where an individual holds shares which form part of the ordinary share capital of a company and the relief has been given (and not withdrawn) in respect of some but not others, then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply separately to the shares in respect of which the relief has been given (and not withdrawn) and to the other shares (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(7) Where section 58 has applied to any **[**[F218]shares in respect of which relief has been given and not withdrawn**]** disposed of by an individual to his or her spouse ("the transferee"), subsection (2) above shall apply in relation to the subsequent disposal of the shares by the transferee to a third party.

(8) Where section 135 or 136 would, but for this subsection, apply in relation to [F219]... shares issued after 18th March 1986 in respect of which an individual has been given relief, that section shall apply only if the relief is withdrawn.

[[F220](8A) Subsection (8) above shall not have effect to disapply section 135 or 136 where—

(a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future [F221]... right to be redeemed,

(b) the new shares are issued on or after 29th November 1994 and after the end of the relevant period, and

(c) the condition in subsection (8B) below is fulfilled.

(8B) The condition is that at some time before the issue of the new shares—

(a) the company issuing them issued eligible shares, and

(b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act and in accordance with that section.

(8C) In subsection (8A) above—

(a) "new holding" shall be construed in accordance with sections 126, 127, 135 and 136;

(b) "relevant period" means the period found by applying section 289(12)(a) of the Taxes Act by reference to the company issuing the shares referred to in subsection (8) above and by reference to those shares.**]**

[[F222](8D) Where shares in respect of which relief has been given and not withdrawn are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—

(a) subsection (8) above shall not have effect to disapply section 135; and

(b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.**]**

(9) Sections 127 to 130 shall not apply in relation to any shares in respect of which relief (other than relief under the 1981 Act) has been given and which form part of a company's ordinary share capital if—

(a) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation occurring after 18th March 1986 affecting those shares; and

(b) immediately following the reorganisation, the relief has not been withdrawn in respect of those shares or relief has been given in respect of the allotted shares and not withdrawn.

(10) Where relief is reduced by virtue of subsection (2) of section 305 of the Taxes Act—

(a) the sums allowable as deductions from the consideration in the computation, for the purposes of capital gains tax, of the gain or loss accruing to an individual on the disposal, after 18th March 1986, of any of the allotted shares or debentures shall be taken to include the amount of the reduction apportioned between the allotted shares or (as the case may be) debentures in **[**[F223]a way which is**]** just and reasonable; and

(b) the sums so allowable on the disposal (in circumstances in which subsections (2) to (8) above do not apply) of any of the shares referred to in section 305(2)(a) shall be taken to be reduced by the amount mentioned in paragraph (a) above, similarly apportioned between those shares.

(11) There shall be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the relief being given or withdrawn.

[F224(12) In this section—

"ordinary share capital" has the same meaning as in the Taxes Act;

"ordinary shares", in relation to a company, means shares forming part of its ordinary share capital.**]**

Textual Amendments

F214 Words in s. 150(1) inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 15 para. 29**

F215 Words in s. 150(4)(a) substituted (with effect in accordance with Sch. 13 para. 42(8)(a) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 42(1)(a)**

F216 Word in s. 150(4)(a) inserted (with effect in accordance with Sch. 13 para. 42(8)(a) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 42(1)(b)**

F217 Words in s. 150(5) substituted (with effect in accordance with Sch. 13 para. 42(8)(a) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 42(2)**

F218 Words in s. 150(7) substituted (with effect in accordance with Sch. 13 para. 42(8)(b) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 42(3)**

F219 Word in s. 150(8) repealed (with effect in accordance with Sch. 13 para. 42(8)(c) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 42(4), **Sch. 27 Pt. III(14)**

F220 S. 150(8A)-(8C) inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 69**

F221 Word in s. 150(8A)(a) repealed (with effect in accordance with Sch. 13 para. 42(8)(d) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 42(5), **Sch. 27 Pt. III(14)**

F222 S. 150(8D) inserted (with effect in accordance with Sch. 13 para. 42(8)(e) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 42(6)**

F223 Words in s. 150(10)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 54**

F224 S. 150(12) inserted (with effect in accordance with Sch. 13 para. 42(8)(f) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 42(7)**

Marginal Citations

M42 1983 c. 28.

M43 1981 c. 35.

M44 1981 c. 35.

[F225**150A Enterprise investment scheme.**

(1) For the purpose of determining the gain or loss on any disposal of F226... shares by an individual where—

(a) an amount of relief is attributable to the shares, and

(b) apart from this subsection there would be a loss,

the consideration given by him for the shares shall be treated as reduced by the amount of the relief.

(2) Subject to subsection (3) below, if on any disposal of F227... shares by an individual after the end of the period referred to in section 312(1A)(a) of the Taxes Act where an amount of relief is attributable to the shares, there would (apart from this subsection) be a gain, the gain shall not be a chargeable gain.

[Notwithstanding anything in section 16(2), subsection (2) above shall not apply to a [F228](2A) disposal on which a loss accrues.**]**

(3) Where—

(a) an individual's liability to income tax has been reduced (or treated by virtue of section 304 of the Taxes Act (husband and wife) as reduced) for any year of assessment under section 289A of that Act in respect of any issue of shares, and

[[F229](aa) the amount of the reduction is not found under section 289A(2)(b) of that Act, and**]**

(b) the amount of the reduction ("A") is less than the amount ("B") which is equal to tax at the lower rate for that year on the amount subscribed for the issue,

then, if there is a disposal of the shares on which there is a gain, subsection (2) above shall apply only to so much of the gain as is found by multiplying it by the fraction—

$$\frac{A}{B}$$

(4) Any question as to—

(a) which of any shares **[**[F230]acquired by an individual at different times a disposal relates to**]**, being shares to which relief is attributable, or

(b) whether a disposal relates to shares to which relief is attributable or to other shares,

shall for the purposes of capital gains tax be determined as for the purposes of section 299 of the Taxes Act; and Chapter I of this Part shall have effect subject to the foregoing provisions of this subsection.

(5) **[**[F231]Sections 104, 105 and 106A**]** shall not apply to shares to which relief is attributable.

[[F232](6) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—

(a) shares to which relief is attributable and to which subsection (6A) below applies,

(b) shares to which relief is attributable and to which that subsection does not apply, and

(c) shares to which relief is not attributable,

then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this section) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(6A) This subsection applies to any shares if—

(a) expenditure on the shares has been set under Schedule 5B to this Act against the whole or part of any gain; and

(b) in relation to the shares there has been no chargeable event for the purposes of that Schedule.**]**

(7) Where—

(a) an individual holds shares ("the existing holding") which form part of the ordinary share capital of a company,

(b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and

(c) immediately following the reorganisation, relief is attributable to the existing holding or the allotted shares,

sections 127 to 130 shall not apply in relation to the existing holding.

(8) Sections 135 and 136 shall not apply in respect of shares to which relief is attributable.

F233(8A) **[** Subsection (8) above shall not have effect to disapply section 135 or 136 where—

(a) the new holding consists of new ordinary shares carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future F234... right to be redeemed,

(b) the new shares are issued on or after 29th November 1994 and after the end of the relevant period, and

(c) the condition in subsection (8B) below is satisfied.

(8B) The condition is that at some time before the issue of the new shares—

(a) the company issuing them issued eligible shares, and

(b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act and in accordance with that section.

(8C) In subsection (8A) above—

(a) "new holding" shall be construed in accordance with sections 126, 127, 135 and 136;

(b) "relevant period" means the period found by applying section 312(1A)(a) of the Taxes Act by reference to the company issuing the shares referred to in subsection (8) above and by reference to those shares.**]**

F235(8D) **[** Where shares to which relief is attributable are exchanged for other shares in circumstances such that section 304A of the Taxes Act (acquisition of share capital by new company) applies—

(a) subsection (8) above shall not have effect to disapply section 135; and

(b) subsections (2)(b), (3) and (4) of section 304A of the Taxes Act, and subsection (5) of that section so far as relating to section 306(2) of that Act, shall apply for the purposes of this section as they apply for the purposes of Chapter III of Part VII of that Act.**]**

(9) Where the relief attributable to any shares is reduced by virtue of section 305(2) of the Taxes Act—

(a) the sums allowable as deductions from the consideration in the computation, for the purposes of capital gains tax, of the gain or loss accruing to an individual on the disposal of any of the allotted shares or debentures shall be taken to include the amount of the reduction apportioned between the allotted shares or (as the case may be) debentures in **[**F236a way which is**]** just and reasonable, and

(b) the sums so allowable on the disposal (in circumstances in which the preceding provisions of this section do not apply) of any of the shares referred to in section 305(1)(a) shall be taken to be reduced by the amount mentioned in paragraph (a) above, similarly apportioned between those shares.

(10) There shall be made all such adjustments of capital gains tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the relief being given or withdrawn.

[In this section—

F237(10A) "ordinary share capital" has the same meaning as in the Taxes Act;

"ordinary shares", in relation to a company, means shares forming part of its ordinary share capital.**]**

(11) Chapter III of Part VII of the Taxes Act (enterprise investment scheme) applies for the purposes of this section to determine whether relief is attributable to any shares and, if so, the amount of relief so attributable; and "eligible shares" has the same meaning as in that Chapter.

(12) References in this section to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994.**]**

Textual Amendments

F225 S. 150A inserted (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 15 para. 30**

F226 Word in s. 150A(1) repealed (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 24(1), **Sch. 27 Pt. III(14)**

F227 Word in s. 150A(2) repealed (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 24(1), **Sch. 27 Pt. III(14)**

F228 S. 150A(2A) inserted (with application in accordance with Sch. 13 para. 2(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 13 para. 2(2)**

F229 S. 150A(3)(aa) inserted (with application in accordance with Sch. 13 para. 2(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 13 para. 2(3)**

F230 Words in s. 150A(4)(a) substituted (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 24(2)**

F231 Words in s. 150A(5) substituted (with effect in accordance with Sch. 13 para. 24(8)(a) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 24(3)**

F232 S. 150A(6)(6A) substituted for s. 150A(6) (with effect in accordance with Sch. 13 para. 24(8)(b) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 24(4)**

F233 Ss. 150A(8A)-(8C) inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 13 para. 2(4)**

F234 Word in s. 150A(8A)(a) repealed (with effect in accordance with Sch. 13 para. 24(8)(c) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 24(5), **Sch. 27 Pt. III(14)**

F235 S. 150A(8D) inserted (with effect in accordance with Sch. 13 para. 24(8)(d) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 24(6)**

F236 Words in s. 150A(9)(a) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 54**

F237 S. 150A(10A) inserted (with effect in accordance with Sch. 13 para. 24(8)(e) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 24(7)**

[F238150B Enterprise investment scheme: reduction of relief.

(1) This section has effect where section 150A(2) applies on a disposal of F239... shares, and before the disposal but on or after 29th November 1994—

(a) value is received in circumstances where relief attributable to the shares is reduced by an amount under section 300(1A)(a) of the Taxes Act,

(b) there is a repayment, redemption, repurchase or payment in circumstances where relief attributable to the shares is reduced by an amount under section 303(1A)(a) of that Act, or

(c) paragraphs (a) and (b) above apply.

(2) If section 150A(2) applies on the disposal but section 150A(3) does not, section 150A(2) shall apply only to so much of the gain as remains after deducting so much of it as is found by multiplying it by the fraction—

(a) whose numerator is equal to the amount by which the relief attributable to the shares is reduced as mentioned in subsection (1) above, and

(b) whose denominator is equal to the amount of the relief attributable to the shares.

(3) If section 150A(2) and (3) apply on the disposal, section 150A(2) shall apply only to so much of the gain as is found by—

(a) taking the part of the gain found under section 150A(3), and

(b) deducting from that part so much of it as is found by multiplying it by the fraction mentioned in subsection (2) above.

(4) Where the relief attributable to the shares is reduced as mentioned in subsection (1) above by more than one amount, the numerator mentioned in subsection (2) above shall be taken to be equal to the aggregate of the amounts.

(5) The denominator mentioned in subsection (2) above shall be found without regard to any reduction mentioned in subsection (1) above.

(6) Subsections (11) and (12) of section 150A apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F238 S. 150B inserted (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 13 para. 3**

F239 Word in s. 150B(1) repealed (with effect in accordance with Sch. 13 para. 25(2) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 25(1), **Sch. 27 Pt. III(14)**

[F240 150C Enterprise investment scheme: re-investment.

Schedule 5B to this Act (which provides relief in respect of re-investment under the enterprise investment scheme) shall have effect.**]**

Textual Amendments

F240 S. 150C inserted (with effect in accordance with Sch. 13 para. 4(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 13 para. 4(1)**

[F241 150D Enterprise investment scheme: application of taper relief

Schedule 5BA to this Act (which provides for the application of taper relief in cases where relief under Schedule 5B, or Chapter III of Part VII of the Taxes Act, applies) shall have effect.**]**

Textual Amendments

F241 S. 150D inserted (27.7.1999) by Finance Act 1999 (c. 16), **s. 72(1)**

151 Personal equity plans.

(1) The Treasury may make regulations providing that an individual who invests under a plan shall be entitled to relief from capital gains tax in respect of the investments.

(2) Subsections **[**F242(1A)**]** to (5) of section 333 of the Taxes Act F243... shall apply in relation to regulations under subsection (1) above as they apply in relation to regulations under subsection (1) of that section but with the substitution for any reference to income tax of a reference to capital gains tax.

[F244(2A) Section 333A of the Taxes Act (F245... tax representatives) shall apply in relation to regulations under subsection (1) above as it applies in relation to regulations under section 333 of that Act.**]**

(3) Regulations under this section may include provision securing that losses are disregarded for the purposes of capital gains tax where they accrue on the disposal of investments on or after 18th January 1988.

[F246(4) Regulations under this section may include provision which, for cases where a person subscribes to a plan by transferring or renouncing shares or rights to shares—

(a) modifies the effect of this Act in relation to their acquisition and their transfer or renunciation; and

(b) makes consequential modifications of the effect of this Act in relation to anything which (apart from the regulations) would have been regarded on or after their acquisition as an indistinguishable part of the same asset.**]**

Textual Amendments

F242 Word in s. 151(2) substituted (31.7.1998) by Finance Act 1998 (c. 36), **s. 75(6)**

F243 Words in s. 151(2) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(15)**

F244 S. 151(2A) inserted (1.5.1995) by Finance Act 1995 (c. 4), **s. 64(2)**

F245 Words in s. 151(2A) repealed (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(15)**

F246 S. 151(4) inserted (27.7.1993) by 1993 c. 34, **s.85**

Modifications etc. (not altering text)

C91 S. 151 extended (31.7.1998) by Finance Act 1998 (c. 36), **s. 123(7)(b)**

[F247**151A Venture capital trusts: reliefs.**

(1) A gain or loss accruing to an individual on a qualifying disposal of any ordinary shares in a company which—

(a) was a venture capital trust at the time when he acquired the shares, and

(b) is still such a trust at the time of the disposal,

shall not be a chargeable gain or, as the case may be, an allowable loss.

(2) For the purposes of this section a disposal of shares is a qualifying disposal in so far as—

(a) it is made by an individual who has attained the age of eighteen years;

(b) the shares disposed of were not acquired in excess of the permitted maximum for any year of assessment; and

(c) that individual acquired those shares for bona fide commercial purposes and not as part of a scheme or arrangement the main purpose of which, or one of the main purposes of which, is the avoidance of tax.

(3) Schedule 5C shall have effect for providing relief in respect of gains invested in venture capital trusts.

(4) In determining for the purposes of this section whether a disposal by any person of shares in a venture capital trust relates to shares acquired in excess of the permitted maximum for any year of assessment, it shall be assumed (subject to subsection (5) below)—

(a) as between shares acquired by the same person on different days, that those acquired on an earlier day are disposed of by that person before those acquired on a later day; and

(b) as between shares acquired by the same person on the same day, that those acquired in excess of the permitted maximum are disposed of by that person before he disposes of any other shares acquired on that day.

(5) It shall be assumed for the purposes of subsection (1) above that a person who disposes of shares in a venture capital trust disposes of shares acquired at a time when it was not such a trust before he disposes of any other shares in that trust.

(6) References in this section to shares in a venture capital trust acquired in excess of the permitted maximum for any year of assessment shall be construed in accordance with the provisions of Part II of Schedule 15B to the Taxes Act; and the provisions of that Part of that Schedule shall apply (with subsections (4) and (5) above) for identifying the shares which are, in any case, to be treated as representing shares acquired in excess of the permitted maximum.

(7) In this section and section 151B "ordinary shares", in relation to a company, means any shares forming part of the company's ordinary share capital (within the meaning of the Taxes Act).

Textual Amendments

F247 Ss. 151A, 151B inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 72(3)**

Modifications etc. (not altering text)

C92 S. 151A(4)(5) applied by Income and Corporation Taxes Act 1988 (c. 1), Sch. 15B para. 8(6)(c) (as inserted (1.5.1995) by Finance Act 1995 (c. 4), s. 71(2), **Sch. 15**)

151B Venture capital trusts: supplementary.

(1) Sections 104, 105 and **[**F248106A**]** shall not apply to any shares in a venture capital trust which are eligible for relief under section 151A(1).

(2) Subject to the following provisions of this section, where—

(a) an individual holds any ordinary shares in a venture capital trust,

(b) some of those shares fall within one of the paragraphs of subsection (3) below, and

(c) others of those shares fall within at least one other of those paragraphs,

then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply separately in relation to the shares (if any) falling within each of the paragraphs of that subsection (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(3) The kinds of shares referred to in subsection (2) above are—

(a) any shares in a venture capital trust which are eligible for relief under section 151A(1) and by reference to which any person has been given or is entitled to claim relief under Part I of Schedule 15B to the Taxes Act;

(b) any shares in a venture capital trust which are eligible for relief under section 151A(1) but by reference to which no person has been given, or is entitled to claim, any relief under that Part of that Schedule;

(c) any shares in a venture capital trust by reference to which any person has been given, or is entitled to claim, any relief under that Part of that Schedule but which are not shares that are eligible for relief under section 151A(1); and

(d) any shares in a venture capital trust that do not fall within any of paragraphs (a) to (c) above.

(4) Where—

(a) an individual holds ordinary shares in a company ("the existing holding"),

(b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and

(c) immediately following the reorganisation, the shares or the allotted holding are shares falling within any of paragraphs (a) to (c) of subsection (3) above,

sections 127 to 130 shall not apply in relation to the existing holding.

(5) Sections 135 and 136 shall not apply where—

(a) the exchanged holding consists of shares falling within paragraph (a) or (b) of subsection (3) above; and

(b) that for which the exchanged holding is or is treated as exchanged does not consist of ordinary shares in a venture capital trust.

(6) Where—

(a) the approval of any company as a venture capital trust is withdrawn, and

(b) the withdrawal of the approval is not one to which section 842AA(8) of the Taxes Act applies,

any person who at the time when the withdrawal takes effect is holding shares in that company which (apart from the withdrawal) would be eligible for relief under section 151A(1) shall be deemed for the purposes of this Act, at that time, to have disposed of and immediately re-acquired those shares for a consideration equal to their market value at that time.

(7) The disposal that is deemed to take place by virtue of subsection (6) above shall be deemed for the purposes of section 151A to take place while the company is still a venture capital trust; but, for the purpose of applying sections 104, 105 and **[**[F249]106A**]** to the shares that are deemed to be re-acquired, it shall be assumed that the re-acquisition for which that subsection provides takes place immediately after the company ceases to be such a trust.

(8) For the purposes of this section—

(a) shares are eligible for relief under section 151A(1) at any time when they are held by an individual whose disposal of the shares at that time would (on the assumption, where it is not the case, that the individual attained the age of eighteen years before that time) be a disposal to which section 151A(1) would apply; and

(b) shares shall not, in relation to any time, be treated as shares by reference to which relief has been given under Part I of Schedule 15B to the Taxes Act if that time falls after—

(i) any relief given by reference to those shares has been reduced or withdrawn,

(ii) any chargeable event (within the meaning of Schedule 5C) has occurred in relation to those shares, or

(iii) the death of a person who held those shares immediately before his death;

and

(c) the references, in relation to sections 135 and 136, to the exchanged holding is a reference to the shares in company B or, as the case may be, to the shares or debentures in respect of which shares or debentures are issued under the arrangement in question.**]**

Textual Amendments

F247 Ss. 151A, 151B inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 72(3)**

F248 Word in s. 151B(1) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(6)**

F249 Word in s. 151B(7) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(6)**

PART V

TRANSFER OF BUSINESS ASSETS

CHAPTER I

GENERAL PROVISIONS

Replacement of business assets

152 Roll-over relief.

(1) If the consideration which a person carrying on a trade obtains for the disposal of, or of his interest in, assets ("the old assets") used, and used only, for the purposes of the trade throughout the period of ownership is applied by him in acquiring other assets, or an interest in other assets ("the new assets") which on the acquisition are taken into use, and used only, for the purposes of the trade, and the old assets and new assets are

within the classes of assets listed in section 155, then the person carrying on the trade shall, on making a claim as respects the consideration which has been so applied, be treated for the purposes of this Act—

(a) as if the consideration for the disposal of, or of the interest in, the old assets were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

(b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the excess of the amount or value of the actual consideration for the disposal of, or of the interest in, the old assets over the amount of the consideration which he is treated as receiving under paragraph (a) above,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

(2) Where subsection (1)(a) above applies to exclude a gain which, in consequence of Schedule 2, is not all chargeable gain, the amount of the reduction to be made under subsection (1)(b) above shall be the amount of the chargeable gain, and not the whole amount of the gain.

(3) Subject to subsection (4) below, this section shall only apply if the acquisition of, or of the interest in, the new assets takes place, or an unconditional contract for the acquisition is entered into, in the period beginning 12 months before and ending 3 years after the disposal of, or of the interest in, the old assets, or at such earlier or later time as the Board may by notice allow.

(4) Where an unconditional contract for the acquisition is so entered into, this section may be applied on a provisional basis without waiting to ascertain whether the new assets, or the interest in the new assets, is acquired in pursuance of the contract, and, when that fact is ascertained, all necessary adjustments shall be made by making **[**[F250]or amending**]** assessments or by repayment or discharge of tax, and shall be so made notwithstanding any limitation on the time within which assessments **[**[F251]or amendments**]** may be made.

(5) This section shall not apply unless the acquisition of, or of the interest in, the new assets was made for the purpose of their use in the trade, and not wholly or partly for the purpose of realising a gain from the disposal of, or of the interest in, the new assets.

(6) If, over the period of ownership or any substantial part of the period of ownership, part of a building or structure is, and part is not, used for the purposes of a trade, this section shall apply as if the part so used, with any land occupied for purposes ancillary to the occupation and use of that part of the building or structure, were a separate asset, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, the building or structure and other land.

(7) If the old assets were not used for the purposes of the trade throughout the period of ownership this section shall apply as if a part of the asset representing its use for the purposes of the trade having regard to the time and extent to which it was, and was not, used for those purposes, were a separate asset which had been wholly used for the purposes of the trade, and this subsection shall apply in relation to that part subject to any necessary apportionment of consideration for an acquisition or disposal of, or of the interest in, the asset.

(8) This section shall apply in relation to a person who, either successively or at the same time, carries on 2 or more trades as if both or all of them were a single trade.

(9) In this section "period of ownership" does not include any period before 31st March 1982.

(10) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.

(11) Without prejudice to section 52(4), where consideration is given for the acquisition or disposal of assets some or part of which are assets in relation to which a claim under this section applies, and some or part of which are not, the consideration shall be apportioned in such manner as is just and reasonable.

Textual Amendments

F250 Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(1)(a)**

F251 Words in s. 152(4) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(1)(b)**

Modifications etc. (not altering text)

C93 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C95 S. 152 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(3)**

C96 Ss. 152-154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(4)**

C97 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C98 S. 152 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(1)(a)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C99 S. 152 restricted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(2)(a)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C100 S. 152 applied (with modifications) (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

153 Assets only partly replaced.

(1) Section 152(1) shall not apply if part only of the amount or value of the consideration for the disposal of, or of the interest in, the old assets is applied as described in that subsection, but if all of the amount or value of the consideration except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of, or of the interest in, the old assets is so applied, then the person carrying on the trade, on making a claim as respects the consideration which has been so applied, shall be treated for the purposes of this Act—

(a) as if the amount of the gain so accruing were reduced to the amount of the said part (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain), and

(b) as if the amount or value of the consideration for the acquisition of, or of the interest in, the new assets were reduced by the amount by which the gain is reduced (or as the case may be the amount by which the chargeable gain is proportionately reduced) under paragraph (a) of this subsection,

but neither paragraph (a) nor paragraph (b) above shall affect the treatment for the purposes of this Act of the other party to the transaction involving the old assets, or of the other party to the transaction involving the new assets.

(2) Subsections (3) to (11) of 152 shall apply as if this section formed part of that section.

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C96 Ss. 152-154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(4)**

C97 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C101 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C102 S. 153 restricted (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(3)**

C103 S. 153 restricted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(2)(a)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C104 S. 153 applied (with modifications) (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(3)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

[F252 153A Provisional application of sections 152 and 153.

(1) This section applies where a person carrying on a trade who for a consideration disposes of, or of his interest in, any assets ("the old assets") declares, in his return for the chargeable period in which the disposal takes place—

(a) that the whole or any specified part of the consideration will be applied in the acquisition of, or of an interest in, other assets ("the new assets") which on the acquisition will be taken into use, and used only, for the purposes of the trade;

(b) that the acquisition will take place as mentioned in subsection (3) of section 152; and

(c) that the new assets will be within the classes listed in section 155.

(2) Until the declaration ceases to have effect, section 152 or, as the case may be, section 153 shall apply as if the acquisition had taken place and the person had made a claim under that section.

(3) The declaration shall cease to have effect as follows—

(a) if and to the extent that it is withdrawn before the relevant day, or is superseded before that day by a valid claim made under section 152 or 153, on the day on which it is so withdrawn or superseded; and

(b) if and to the extent that it is not so withdrawn or superseded, on the relevant day.

(4) On the declaration ceasing to have effect in whole or in part, all necessary adjustments—

(a) shall be made by making or amending assessments or by repayment or discharge of tax; and

(b) shall be so made notwithstanding any limitation on the time within which assessments or amendments may be made.

(5) In this section "the relevant day" means—

(a) in relation to capital gains tax, the third anniversary of the 31st January next following the year of assessment in which the disposal of, or of the interest in, the old assets took place;

(b) in relation to corporation tax, the fourth anniversary of the last day of the accounting period in which that disposal took place.

(6) Subsections (6), (8), (10) and (11) of section 152 shall apply for the purposes of this section as they apply for the purposes of that section.**]**

Textual Amendments

F252 S. 153A inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(2)**

154 New assets which are depreciating assets.

(1) Sections 152, 153 and 229 shall have effect subject to the provisions of this section in which—

(a) the "held-over gain" means the amount by which, under those sections, and apart from the provisions of this section, any chargeable gain on one asset ("asset No.1") is reduced, with a corresponding reduction of the expenditure allowable in respect of another asset ("asset No.2"), and

(b) any reference to a gain of any amount being carried forward to any asset is a reference to a reduction of that amount in a chargeable gain coupled with a reduction of the same amount in expenditure allowable in respect of that asset.

(2) If asset No.2 is a depreciating asset, the held-over gain shall not be carried forward, but the claimant shall be treated as if so much of the chargeable gain on asset No.1 as is equal to the held-over gain did not accrue until—

(a) the claimant disposes of asset No.2, or

(b) he ceases to use asset No.2 for the purposes of a trade carried on by him, or

(c) the expiration of a period of 10 years beginning with the acquisition of asset No.2,

whichever event comes first.

(3) Where section 229 has effect subject to the provisions of this section, subsection (2)(b) above shall have effect as if it read—

"(b) section 232(3) applies as regards asset No.2 (whether or not by virtue of section 232(5)), or".

(4) If, in the circumstances specified in subsection (5) below, the claimant acquires an asset ("asset No.3") which is not a depreciating asset, and claims under section 152 or 153—

(a) the gain held-over from asset No.1 shall be carried forward to asset No.3, and

(b) the claim which applies to asset No.2 shall be treated as withdrawn (so that subsection (2) above does not apply).

(5) The circumstances are that asset No.3 is acquired not later than the time when the chargeable gain postponed under subsection (2) above would accrue and, assuming—

(a) that the consideration for asset No.1 was applied in acquiring asset No.3, and

(b) that the time between the disposal of asset No.1 and the acquisition of asset No.3 was within the time limited by section 152(3),

the whole amount of the postponed gain could be carried forward from asset No.1 to asset No.3; and the claim under subsection (4) above shall be accepted as if those assumptions were true.

(6) If part only of the postponed gain could be carried forward from asset No.1 to asset No.3, and the claimant so requires, that and the other part of the postponed gain shall be treated as derived from 2 separate assets, so that, on that claim—

(a) subsection (4) above applies to the first-mentioned part, and

(b) the other part remains subject to subsection (2) above.

(7) For the purposes of this section, an asset is a depreciating asset at any time if—

(a) at that time it is a wasting asset, as defined in section 44, or

(b) within the period of 10 years beginning at that time it will become a wasting asset (so defined).

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C96 Ss. 152-154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(4)**

C97 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C105 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

C106 S. 154 applied (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(5)**

C107 S. 154 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(2)**

C108 S. 154 restricted (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(2)(b)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C109 S. 154 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(6)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

155 Relevant classes of assets.

The classes of assets for the purposes of section 152(1) are as follows.

CLASS 1

Assets within heads A and B below.

Head A

1 Any building or part of a building and any permanent or semi-permanent structure in the nature of a building, occupied (as well as used) only for the purposes of the trade

2 Any land occupied (as well as used) only for the purposes of the trade.

Head A has effect subject to section 156.

Head B

Fixed plant or machinery which does not form part of a building or of a permanent or semi-permanent structure in the nature of a building.

CLASS 2

Ships, aircraft and hovercraft ("hovercraft" having the same meaning as in the [M45]Hovercraft Act 1968).

CLASS 3

Satellites, space stations and spacecraft (including launch vehicles).

CLASS 4

Goodwill.

CLASS 5

Milk quotas (that is, rights to sell dairy produce without being liable to pay milk levy or to deliver dairy produce without being liable to pay a contribution to milk levy) and potato quotas (that is, rights to produce potatoes without being liable to pay more than the ordinary contribution to the Potato Marketing Board's fund).

[[F253]CLASS 6

Ewe and suckler cow premium quotas (that is, rights in respect of any ewes or suckler cows to receive payments by way of any subsidy entitlement to which is determined by reference to limits contained in a Community instrument).**]**

[[F254]CLASS 7

Fish quota (that is, an allocation of quota to catch fish stocks, which derives from the Total Allowable Catches set in pursuance of Article 8(4) of Council Regulation (EEC) 3760/92 and under annual Council Regulations made in accordance with that Article, or under any replacement Community Instruments).**]**

[[F255]CLASS 8

Assets within heads A and B below.

Head A

Rights of a member of Lloyd's under a syndicate within the meaning of Chapter III of Part II of the Finance Act 1993.

Head B

An asset which a member of Lloyd's is treated as having acquired by virtue of section 82 of the Finance Act 1999.**]**

Textual Amendments

F253 Words in s. 155 inserted (27.7.1993 with effect as mentioned in s. 86(4)) by 1993 c. 34, **s. 86(1)(4)**

F254 Words in s. 155 added (with effect in accordance with art. 1(2) of the amending S.I.) by The Finance Act 1993, Section 86(2), (Fish Quota) Order 1999 (S.I. 1999/564), arts. 1(1), **3**

F255 Words in s. 155 inserted (with application in accordance with s. 84(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 84(1)**

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C97 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C110 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras. 3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

Marginal Citations

M45 1968 c.59.

156 Assets of Class 1.

(1) This section has effect as respects head A of Class 1 in section 155.

(2) Head A shall not apply where the trade is a trade—

(a) of dealing in or developing land, or

(b) of providing services for the occupier of land in which the person carrying on the trade has an estate or interest.

(3) Where the trade is a trade of dealing in or developing land, but a profit on the sale of any land held for the purposes of the trade would not form part of the trading profits, then, as regards that land, the trade shall be treated for the purposes of subsection (2)(a) above as if it were not a trade of dealing in or developing land.

[F256(4) Where section 98 of the Taxes Act applies (tied premises: receipts and expenses treated as those of trade), the trader shall be treated, to the extent that the conditions in subsection (1) of that section are met in relation to premises, as occupying as well as using the premises for the purposes of the trade.**]**

Textual Amendments

F256 S. 156(4) substituted (with effect in accordance with s. 41(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 41(2)** (with art. 41(4)-(7))

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C97 Ss. 152-156 modified (3.5.1994) by Finance Act 1994 (c. 9), **Sch. 25 para. 3(2)**

C111 Ss. 152-156 modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras.3, **7**
Ss. 152-156 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 6(2)**

157 Trade carried on by family company: business assets dealt with by individual.

In relation to a case where—

(a) the person disposing of, or of his interest in, the old assets and acquiring the new assets, or an interest in them, is an individual, and

(b) the trade or trades in question are carried on not by that individual but by a company which, both at the time of the disposal and at the time of the acquisition referred to in paragraph (a) above, is his **[**F257personal company**]**, **[**F258that is to say, a company the voting rights in which are exercisable, as to not less than 5 per cent., by him**]**,

any reference in sections 152 to 156 to the person carrying on the trade (or the 2 or more trades) includes a reference to that individual.

Textual Amendments

F257 Words in s. 157 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**

F258 Words in s. 157 substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 140(3)**

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

158 Activities other than trades, and interpretation.

(1) Sections 152 to 157 shall apply with the necessary modifications—

(a) in relation to the discharge of the functions of a public authority, and

(b) in relation to the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits, and

(c) in relation to a profession, vocation, office or employment, and

(d) in relation to such of the activities of a body of persons whose activities are carried on otherwise than for profit and are wholly or mainly directed to the protection or promotion of the interests of its members in the carrying on of their trade or profession as are so directed, and

(e) in relation to the activities of an unincorporated association or other body chargeable to corporation tax, being a body not established for profit whose activities are wholly or mainly carried on otherwise than for profit, but in the case of assets within head A of class 1 only if they are both occupied and used by the body, and in the case of other assets only if they are used by the body,

as they apply in relation to a trade.

(2) In sections 152 to 157 and this section the expressions "trade", "profession", "vocation", "office" and "employment" have the same meanings as in the Income Tax Acts, but not so as to apply the provisions of the Income Tax Acts as to the circumstances in which, on a change in the persons carrying on a trade, a trade is to be regarded as discontinued, or as set up and commenced.

(3) Sections 152 to 157 and this section shall be construed as one.

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

C112 S. 158 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 7(7)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

159 Non-residents: roll-over relief.

(1) Section 152 shall not apply in the case of a person if the old assets are chargeable assets in relation to him at the time they are disposed of, unless the new assets are chargeable assets in relation to him immediately after the time they are acquired.

(2) Subsection (1) above shall not apply where—

(a) the person acquires the new assets after he has disposed of the old assets, and

(b) immediately after the time they are acquired the person is resident or ordinarily resident in the United Kingdom.

(3) Subsection (2) above shall not apply where immediately after the time the new assets are acquired—

(a) the person is a dual resident, and

(b) the new assets are prescribed assets.

(4) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3).

(5) In this section—

"dual resident" means a person who is resident or ordinarily resident in the United Kingdom and falls to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and

"prescribed asset", in relation to a dual resident, means an asset in respect of which, by virtue of the asset being of a description specified in any double taxation relief arrangements, he falls to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to him on a disposal.

(6) In this section—

(a) "the old assets" and "the new assets" have the same meanings as in section 152,

(b) references to disposal of the old assets include references to disposal of an interest in them, and

(c) references to acquisition of the new assets include references to acquisition of an interest in them or to entering into an unconditional contract for the acquisition of them.

(7) Where the acquisition of the new assets took place before 14th March 1989 and the disposal of the old assets took place, or takes place, on or after that date, this section shall not apply if the disposal of the old assets took place, or takes place, within 12 months of the acquisition of the new assets or such longer period as the Board may by notice allow.

Modifications etc. (not altering text)

C94 Ss. 152-160 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 6(1)**

[F259]160 Dual resident companies: roll-over relief.

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Textual Amendments

F259 S. 160 repealed (with effect in accordance with s. 251(1)(a)(6) of the amending Act) by Finance Act 1994 (c. 9), s. 251(6), **Sch. 26 Pt. VIII(1)**

Stock in trade

161 Appropriations to and from stock.

(1) Subject to subsection (3) below, where an asset acquired by a person otherwise than as trading stock of a trade carried on by him is appropriated by him for the purposes of the trade as trading stock (whether on the commencement of the trade or otherwise) and, if he had then sold the asset for its market value, a chargeable gain or allowable loss would have accrued to him, he shall be treated as having thereby disposed of the asset by selling it for its then market value.

(2) If at any time an asset forming part of the trading stock of a person's trade is appropriated by him for any other purpose, or is retained by him on his ceasing to carry on the trade, he shall be treated as having acquired it at that time for a consideration equal to the amount brought into the accounts of the trade in respect of it for tax purposes on the appropriation or on his ceasing to carry on the trade, as the case may be.

(3) Subject to subsection (4) below, subsection (1) above shall not apply in relation to a person's appropriation of an asset for the purposes of a trade if he is chargeable to income tax in respect of the profits of the trade under Case I of Schedule D, and elects that instead the market value of the asset at the time of the appropriation shall, in computing the profits of the trade for purposes of tax, be treated as reduced by the amount of the chargeable gain or increased by the amount of the allowable loss referred to in subsection (1), and where that subsection does not apply by reason of such an election, the profits of the trade shall be computed accordingly.

[[F260](3A) An election under subsection (3) above shall be made—

(a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which ends the period of account in which the asset is appropriated for the purposes of the trade as trading stock;

(b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the asset is appropriated for the purposes of the trade as trading stock;

and in paragraph (a) above "period of account" means a period for which the accounts of the trade are made up.**]**

(4) If a person making an election under subsection (3) is at the time of the appropriation carrying on the trade in partnership with others, the election shall not have effect unless concurred in by the others.

Textual Amendments

F260 S. 161(3A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 36**

Transfer of business to a company

162 Roll-over relief on transfer of business.

(1) This section shall apply for the purposes of this Act where a person who is not a company transfers to a company a business as a going concern, together with the whole assets of the business, or together with the whole of those assets other than cash, and the business is so transferred wholly or partly in exchange for shares issued by the company to the person transferring the business.

Any shares so received by the transferor in exchange for the business are referred to below as "the new assets".

(2) The amount determined under subsection (4) below shall be deducted from the aggregate of the chargeable gains less allowable losses ("the amount of the gain on the old assets").

(3) For the purpose of computing any chargeable gain accruing on the disposal of any new asset—

(a) the amount determined under subsection (4) below shall be apportioned between the new assets as a whole, and

(b) the sums allowable as a deduction under section 38(1)(a) shall be reduced by the amount apportioned to the new asset under paragraph (a) above;

and if the shares which comprise the new assets are not all of the same class, the apportionment between the shares under paragraph (a) above shall be in accordance with their market values at the time they were acquired by the transferor.

(4) The amount referred to in subsections (2) and (3)(a) above shall not exceed the cost of the new assets but, subject to that, it shall be the fraction—

$$\frac{A}{B}$$

of the amount of the gain on the old assets where—

"A" is the cost of the new assets, and

"B" is the value of the whole of the consideration received by the transferor in exchange for the business;

and for the purposes of this subsection "the cost of the new assets" means any sums which would be allowable as a deduction under section 38(1)(a) if the new assets were disposed of as a whole in circumstances giving rise to a chargeable gain.

(5) References in this section to the business, in relation to shares or consideration received in exchange for the business, include references to such assets of the business as are referred to in subsection (l) above.

Retirement relief

F261 163 Relief for disposals by individuals on retirement from family business.

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Textual Amendments

F261 S. 163 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), s. 140(2)(a), **Sch. 27 Pt. III(31)**

F262 164 Other retirement relief.

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Textual Amendments

F262 S. 164 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2), Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), s. 140(2)(b), **Sch. 27 Pt. III(31)**

F263 CHAPTER IA

ROLL-OVER RELIEF ON RE-INVESTMENT

Textual Amendments

F263 Pt. 5 Ch. 1A repealed (with effect in accordance with s. 141(2)(a), Sch. 27 Pt. 3(32) of the amending Act) by Finance Act 1998 (c. 36), s. 141(1)(a), **Sch. 27 Pt. 3(32)**

F263 164A Relief on re-investment for individuals.

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F263 164B Roll-over relief on re-investment by trustees.

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F263 164BB Interaction with retirement relief

. . . . . .

F263 164C Restriction applying to retirement relief and roll-over relief on re-investment.

. . . . . .

[F263]164D Relief carried forward into replacement shares.

. . . . . .

[F263]164E Application of Chapter in cases of an exchange of shares.

. . . . . .

[F263]164F Failure of conditions of relief.

. . . . . .

[F263]164FA Loss of relief in cases where shares acquired on being issued.

. . . . . .

[F263]164FB Qualifying investment acquired from husband or wife.

. . . . . .

[F263]164FM Multiple claims.

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[F263]164G Meaning of "qualifying company".

. . . . . .

[F263]164H Property companies etc. not to be qualifying companies.

. . . . . .

[F263]164I Qualifying trades.

. . . . . .

[F263]164J Provisions supplementary to section 164I.

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[F263]164K Foreign residents.

. . . . . .

[F263]164L Anti-avoidance provisions.

. . . . . .

[F263]164M Exclusion of double relief.

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[F263]164MExclusion of double relief

. . . . . .

[F263]164NInterpretation of Chapter IA.

. . . . . .

CHAPTER II

GIFTS OF BUSINESS ASSETS

165 Relief for gifts of business assets.

(1) If—

(a) an individual ("the transferor") makes a disposal otherwise than under a bargain at arm's length of an asset within subsection (2) below, and

(b) a claim for relief under this section is made by the transferor and the person who acquires the asset ("the transferee") or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (3) and sections 166 and 167, subsection (4) below shall apply in relation to the disposal.

(2) An asset is within this subsection if—

(a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—

(i) the transferor, or

(ii) his **[**[F264]personal company**]**, or

(iii) a member of a trading group of which the holding company is his **[**[F264]personal company**]**, or

(b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—

(i) the shares or securities are neither **[**[F265]listed**]** on a recognised stock exchange nor dealt in on the Unlisted Securities Market, or

(ii) the trading company or holding company is the transferor's **[**[F264]personal company**]**.

(3) Subsection (4) below does not apply in relation to a disposal if—

[F266](a) . . . . . .

[F266](b) . . . . . .

(c) in the case of a disposal of qualifying corporate bonds, a gain is deemed to accrue by virtue of section 116(10)(b), or

(d) subsection (3) of section 260 applies in relation to the disposal (or would apply if a claim for relief were duly made under that section).

(4) Where a claim for relief is made under this section in respect of a disposal—

(a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and

(b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset or, as the case may be, the shares or securities,

shall each be reduced by an amount equal to the held-over gain on the disposal.

(5) Part I of Schedule 7 shall have effect for extending the relief provided for by virtue of subsections (1) to (4) above in the case of agricultural property and for applying it in relation to settled property.

(6) Subject to Part II of Schedule 7 and subsection (7) below, the reference in subsection (4) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from subsection (4) above [F267]..., and in subsection (7) below that chargeable gain is referred to as the unrelieved gain on the disposal.

(7) In any case where—

(a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of section 17(1)) for a disposal in respect of which a claim for relief is made under this section, and

(b) that actual consideration exceeds the sums allowable as a deduction under section 38,

the held-over gain on the disposal shall be the amount by which the unrelieved gain on the disposal exceeds the excess referred to in paragraph (b) above.

(8) Subject to subsection (9) below, in this section and Schedule 7—

[[F268](a) "personal company", in relation to an individual, means a company the voting rights in which are exercisable, as to not less than 5 per cent., by that individual;

(aa) "holding company", "trading company" and "trading group" have the meanings given by paragraph 22 of Schedule A1; and**]**

(b) "trade", "profession" and "vocation" have the same meaning as in the Income Tax Acts.

(9) In this section and Schedule 7 and in determining whether a company is a trading company for the purposes of this section and that Schedule, the expression "trade" shall be taken to include the occupation of woodlands where the woodlands are managed by the occupier on a commercial basis and with a view to the realisation of profits.

(10) Where a disposal after 13th March 1989, in respect of which a claim is made under this section, is (or proves to be) a chargeable transfer for inheritance tax purposes, there shall be allowed as a deduction in computing (for capital gains tax purposes) the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

(a) the inheritance tax attributable to the value of the asset, and

(b) the amount of the chargeable gain as computed apart from this subsection,

and, in the case of a disposal which, being a potentially exempt transfer, proves to be a chargeable transfer, all necessary adjustments shall be made, whether by the discharge or repayment of capital gains tax or otherwise.

(11) Where an amount of inheritance tax—

(a) falls to be redetermined in consequence of the transferor's death within 7 years of making the chargeable transfer in question, or

(b) is otherwise varied,

after it has been taken into account under subsection (10) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

Textual Amendments

F264 Words in s. 165 substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**

F265 Word in s. 165(2)(b)(i) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 10(2)(c)**

F266 S. 165(3)(a)(b) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

F267 Words in s. 165(6) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

F268 S. 165(8)(a)(aa) substituted for s. 165(8)(a) (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 140(4)**

166 Gifts to non-residents.

(1) Section 165(4) shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.

(2) Section 165(4) shall not apply where the transferee is an individual [F269]... if that individual [F269]... —

(a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

Textual Amendments

F269 Words in s. 166(2) repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by Finance Act 1994 (c. 9), s. 251(7)(a), **Sch. 26 Pt. VIII(1)**

167 Gifts to foreign-controlled companies.

(1) Section 165(4) shall not apply where the transferee is a company which is within subsection (2) below.

(2) A company is within this subsection if it is controlled by a person who, or by persons each of whom—

(a) is neither resident nor ordinarily resident in the United Kingdom, and

(b) is connected with the person making the disposal.

(3) For the purposes of subsection (2) above, a person who (either alone or with others) controls a company by virtue of holding assets relating to that or any other company and who is resident or ordinarily resident in the United Kingdom shall be regarded as neither resident nor ordinarily resident there if—

(a) he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements he would not be liable in the United Kingdom to tax on a gain arising on a disposal of the assets.

168 Emigration of donee.

(1) If—

(a) relief is given under section 165 in respect of a disposal to an individual or under section 260 in respect of a disposal to an individual ("the relevant disposal"); and

(b) at a time when he has not disposed of the asset in question, the transferee becomes neither resident nor ordinarily resident in the United Kingdom,

then, subject to the following provisions of this section, a chargeable gain shall be deemed to have accrued to the transferee immediately before that time, and its amount shall be equal to the held-over gain (within the meaning of section 165 or 260) on the relevant disposal.

(2) For the purposes of subsection (1) above the transferee shall be taken to have disposed of an asset before the time there referred to only if he has made a disposal or disposals in connection with which the whole of the held-over gain on the relevant disposal was represented by reductions made in accordance with section 165(4)(b) or 260(3)(b) and where he has made a disposal in connection with which part of that gain was so represented, the amount of the chargeable gain deemed by virtue of this section to accrue to him shall be correspondingly reduced.

(3) The disposals by the transferee that are to be taken into account under subsection (2) above shall not include any disposal to which section 58 applies; but where any such disposal is made by the transferee, disposals by his spouse shall be taken into account under subsection (2) above as if they had been made by him.

(4) Subsection (1) above shall not apply by reason of a person becoming neither resident nor ordinarily resident more than 6 years after the end of the year of assessment in which the relevant disposal was made.

(5) Subsection (1) above shall not apply in relation to a disposal made to an individual if—

(a) the reason for his becoming neither resident nor ordinarily resident in the United Kingdom is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and

(b) he again becomes resident or ordinarily resident in the United Kingdom within the period of 3 years from the time when he ceases to be so, without having meanwhile disposed of the asset in question;

and accordingly no assessment shall be made by virtue of subsection (1) above before the end of that period in any case where the condition in paragraph (a) above is, and the condition in paragraph (b) above may be, satisfied.

(6) For the purposes of subsection (5) above a person shall be taken to have disposed of an asset if he has made a disposal in connection with which the whole or part of the held-

over gain on the relevant disposal would, had he been resident in the United Kingdom, have been represented by a reduction made in accordance with section 165(4)(b) or 260(3)(b) and subsection (3) above shall have effect for the purposes of this subsection as it has effect for the purposes of subsection (2) above.

(7) Where an amount of tax assessed on a transferee by virtue of subsection (1) above is not paid within the period of 12 months beginning with the date when the tax becomes payable then, subject to subsection (8) below, the transferor may be assessed and charged (in the name of the transferee) to all or any part of that tax.

(8) No assessment shall be made under subsection (7) above more than 6 years after the end of the year of assessment in which the relevant disposal was made.

(9) Where the transferor pays an amount of tax in pursuance of subsection (7) above, he shall be entitled to recover a corresponding sum from the transferee.

(10) Gains on disposals made after a chargeable gain has under this section been deemed to accrue by reference to a held-over gain shall be computed without any reduction under section 165(4)(b) or 260(3)(b) in respect of that held-over gain.

169 Gifts into dual resident trusts.

(1) This section applies where there is or has been a disposal of an asset to the trustees of a settlement in such circumstances that, on a claim for relief, section 165 or 260 applies, or would but for this section apply, so as to reduce the amounts of the chargeable gain and the consideration referred to in section 165(4) or 260(3).

(2) In this section "a relevant disposal" means such a disposal as is referred to in subsection (1) above.

(3) Relief under section 165 or 260 shall not be available on a relevant disposal if—

(a) at the material time the trustees to whom the disposal is made fall to be treated, under section 69, as resident and ordinarily resident in the United Kingdom, although the general administration of the trust is ordinarily carried on outside the United Kingdom; and

(b) on a notional disposal of the asset concerned occurring immediately after the material time, the trustees would be regarded for the purposes of any double taxation relief arrangements—

(i) as resident in a territory outside the United Kingdom; and

(ii) as not liable in the United Kingdom to tax on a gain arising on that disposal.

(4) In subsection (3) above—

(a) "the material time" means the time of the relevant disposal; and

(b) a "notional disposal" means a disposal by the trustees of the asset which was the subject of the relevant disposal.

PART VI

COMPANIES, OIL, INSURANCE ETC.

CHAPTER I

COMPANIES

Groups of companies

170 Interpretation of sections 171 to 181.

(1) This section has effect for the interpretation of sections 171 to 181 except in so far as the context otherwise requires, and in those sections—

(a) "profits" means income and chargeable gains, and

(b) "trade" includes "vocation", and includes also an office or employment.

Until 6th April 1993 paragraph (b) shall have effect with the addition at the end of the words "or the occupation of woodlands in any context in which the expression is applied to that in the Income Tax Acts".

(2) Except as otherwise provided—

(a) references to a company apply only to a company, as that expression is limited by subsection (9) below, which is resident in the United Kingdom;

(b) subsections (3) to (6) below apply to determine whether companies form a group and, where they do, which is the principal company of the group;

(c) in applying the definition of "75 per cent. subsidiary" in section 838 of the Taxes Act any share capital of a registered industrial and provident society shall be treated as ordinary share capital; and

(d) "group" and "subsidiary" shall be construed with any necessary modifications where applied to a company incorporated under the law of a country outside the United Kingdom.

(3) Subject to subsections (4) to (6) below—

(a) a company (referred to below and in sections 171 to 181 as the "principal company of the group") and all its 75 per cent. subsidiaries form a group and, if any of those subsidiaries have 75 per cent. subsidiaries, the group includes them and their 75 per cent. subsidiaries, and so on, but

(b) a group does not include any company (other than the principal company of the group) that is not an effective 51 per cent. subsidiary of the principal company of the group.

(4) A company cannot be the principal company of a group if it is itself a 75 per cent. subsidiary of another company.

(5) Where a company ("the subsidiary") is a 75 per cent. subsidiary of another company but those companies are prevented from being members of the same group by subsection (3)(b) above, the subsidiary may, where the requirements of subsection (3) above are satisfied, itself be the principal company of another group notwithstanding subsection (4) above unless this subsection enables a further company to be the principal company of a group of which the subsidiary would be a member.

(6) A company cannot be a member of more than one group; but where, apart from this subsection, a company would be a member of 2 or more groups (the principal company of each group being referred to below as the "head of a group"), it is a member only of that group, if any, of which it would be a member under one of the following tests (applying earlier tests in preference to later tests)—

(a) it is a member of the group it would be a member of if, in applying subsection (3)(b) above, there were left out of account any amount to which a head of a group is or would be beneficially entitled of any profits available for distribution to equity holders of a head of another group or of any assets of a head of another group available for distribution to its equity holders on a winding-up,

(b) it is a member of the group the head of which is beneficially entitled to a percentage of profits available for distribution to equity holders of the company that is greater than the percentage of those profits to which any other head of a group is so entitled,

(c) it is a member of the group the head of which would be beneficially entitled to a percentage of any assets of the company available for distribution to its equity holders on a winding-up that is greater than the percentage of those assets to which any other head of a group would be so entitled,

(d) it is a member of the group the head of which owns directly or indirectly a percentage of the company's ordinary share capital that is greater than the percentage of that capital owned directly or indirectly by any other head of a group (interpreting this paragraph as if it were included in section 838(1)(a) of the Taxes Act).

(7) For the purposes of this section and sections 171 to 181, a company ("the subsidiary") is an effective 51 per cent. subsidiary of another company ("the parent") at any time if and only if—

(a) the parent is beneficially entitled to more than 50 per cent. of any profits available for distribution to equity holders of the subsidiary; and

(b) the parent would be beneficially entitled to more than 50 per cent. of any assets of the subsidiary available for distribution to its equity holders on a winding-up.

(8) Schedule 18 to the Taxes Act (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of subsections (6) and (7) above as if the references to subsection (7), or subsections (7) to (9), of section 413 of that Act were references to subsections (6) and (7) above and as if, in paragraph 1(4), the words from "but" to the end and paragraphs 5(3) **[**[F270]and 5B to 5E**]** and 7(1)(b) were omitted.

(9) For the purposes of this section and sections 171 to 181, references to a company apply only to—

(a) a company within the meaning of the [M46]Companies Act 1985 or the corresponding enactment in Northern Ireland, and

(b) a company which is constituted under any other Act or a Royal Charter or letters patent or (although resident in the United Kingdom) is formed under the law of a country or territory outside the United Kingdom, and

(c) a registered industrial and provident society within the meaning of section 486 of the Taxes Act; and

[F271(cc) an incorporated friendly society within the meaning of the Friendly Societies Act 1992; and**]**

(d) a building society.

(10) For the purposes of this section and sections 171 to 181, a group remains the same group so long as the same company remains the principal company of the group, and if at any time the principal company of a group becomes a member of another group, the first group and the other group shall be regarded as the same, and the question whether or not a company has ceased to be a member of a group shall be determined accordingly.

(11) For the purposes of this section and sections 171 to 181, the passing of a resolution or the making of an order, or any other act, for the winding-up of a member of a group of companies shall not be regarded as the occasion of that or any other company ceasing to be a member of the group.

(12) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to bodies from time to time established by or under any enactment for the carrying on of any industry or part of an industry, or of any undertaking, under national ownership or control as if they were companies within the meaning of those sections, and as if any such bodies charged with related functions (and in particular the Boards and Holding Company established under the M47Transport Act 1962 and the new authorities within the meaning of the M48Transport Act 1968 established under that Act of 1968) and subsidiaries of any of them formed a group, and as if also any 2 or more such bodies charged at different times with the same or related functions were members of a group.

(13) Subsection (12) shall have effect subject to any enactment by virtue of which property, rights, liabilities or activities of one such body fall to be treated for corporation tax as those of another, including in particular any such enactment in Chapter VI of Part XII of the Taxes Act.

(14) Sections 171 to 181, except in so far as they relate to recovery of tax, shall also have effect in relation to the Executive for a designated area within the meaning of section 9(1) of the M49Transport Act 1968 as if that Executive were a company within the meaning of those sections.

Textual Amendments

F270 Words in s. 170(8) inserted (*retrosp.*) by 1992 c. 48, s. 24, Sch. 6 paras. 5, **10**

F271 S. 170(9)(cc) inserted (with application in accordance with s. 136(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 136(1)**

Modifications etc. (not altering text)

C113 S. 170 extended (3.5.1994) by Finance Act 1994 (c. 9), **s. 148(9)**

C114 S. 170 applied (23.3.1995) by The Exchange Gains and Losses (Deferral of Gains and Losses) Regulations 1994 (S.I. 1994/3228), regs. 1(2), **4(1)**

C115 S. 170 applied (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 9 para. 11(5)**

C116 S. 170 applied (with effect in accordance with s. 81(12) of the amending Act) by Finance Act 1999 (c. 16), **s. 81(7)**

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C118 S. 170(7)(8) applied (with modifications) (3.1.1995) by The Ports (Northern Ireland) Order 1994 (S.I. 1994/2809 (N.I. 16)), arts. 1(2), **19(12)**

C119 S. 170(7) modified by 1988 c. 1, s. 209(8E) (as inserted (with effect in accordance with s. 87(7)(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 87(3)**)

Marginal Citations

M46 1985 c. 6.
M47 1962 c. 46.
M48 1968 c. 73.
M49 1968 c. 73.

Transactions within groups

171 Transfers within a group: general provisions.

(1) Notwithstanding any provision in this Act fixing the amount of the consideration deemed to be received on a disposal or given on an acquisition, where a member of a group of companies disposes of an asset to another member of the group, both members shall, except as provided by subsections (2) and (3) below, be treated, so far as relates to corporation tax on chargeable gains, as if the asset acquired by the member to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other; but where it is assumed for any purpose that a member of a group of companies has sold or acquired an asset, it shall be assumed also that it was not a sale to or acquisition from another member of the group.

(2) Subsection (1) above shall not apply where the disposal is—

(a) a disposal of a debt due from a member of a group of companies effected by satisfying the debt or part of it; or

(b) a disposal of redeemable shares in a company on the occasion of their redemption; or

(c) a disposal by or to an investment trust; or

[F272(cc) a disposal by or to a venture capital trust; or**]**

[F273(cd) a disposal by or to a qualifying friendly society; or**]**

(d) a disposal to a dual resident investing company; F274...

F274(e) . . . . . .

and the reference in subsection (1) above to a member of a group of companies disposing of an asset shall not apply to anything which under section 122 is to be treated as a disposal of an interest in shares in a company in consideration for a capital distribution (as defined in that section) from that company, whether or not involving a reduction of capital.

(3) Subsection (1) above shall not apply to a transaction treated by virtue of sections 127 and 135 as not involving a disposal by the company first mentioned in that subsection.

(4) For the purposes of subsection (1) above, so far as the consideration for the disposal consists of money or money's worth by way of compensation for any kind of damage or injury to assets, or for the destruction or dissipation of assets or for anything which depreciates or might depreciate an asset, the disposal shall be treated as being to the person who, whether as an insurer or otherwise, ultimately bears the burden of furnishing that consideration.

[F275(5) In subsection (2)(cd) above "qualifying friendly society" means a company which is a qualifying society for the purposes of section 461B of the Taxes Act (incorporated friendly societies entitled to exemption from income tax and corporation tax on certain profits).**]**

Textual Amendments

F272 S. 171(2)(cc) inserted (with application in accordance with s. 135(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 135(1)**

F273 S. 171(2)(cd) inserted (with application in accordance with s. 136(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 136(2)**

F274 S. 171(2)(e) and preceding word repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by Finance Act 1994 (c. 9), s. 251(7)(b), **Sch. 26 Pt. VIII(1)**

F275 S. 171(5) inserted (with application in accordance with s. 136(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 136(3)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C120 S. 171 excluded (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 para. 7(2)(b)**

C121 Ss. 171, 172 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

C122 S. 171(1) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 2(3)**

C123 S. 171(1) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 7(3)**

C124 S. 171(1) excluded (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 25(3)**

C125 S. 171(1) restricted (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 4(1)**

C126 S. 171(1) excluded (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 2(2)** (with Sch. 7 para. 9(1))

172 Transfer of United Kingdom branch or agency.

(1) Subject to subsections (3) and (4) below, subsection (2) below applies for the purposes of corporation tax on chargeable gains where—

(a) there is a scheme for the transfer by a company ("company A")—

(i) which is not resident in the United Kingdom, but

(ii) which carries on a trade in the United Kingdom through a branch or agency,

of the whole or part of the trade to a company resident in the United Kingdom ("company B"),

(b) company A disposes of an asset to company B in accordance with the scheme at a time when the 2 companies are members of the same group, and

(c) a claim in relation to the asset is made by the 2 companies within 2 years after the end of the accounting period of company B during which the disposal is made.

(2) Where this subsection applies—

(a) company A and company B shall be treated as if the asset were acquired by company B for a consideration of such amount as would secure that neither a gain nor a loss would accrue to company A on the disposal, and

(b) section 25(3) shall not apply to the asset by reason of the transfer.

(3) Subsection (2) above does not apply where—

F276(a) . . . . . .

(b) company B is either a dual resident investing company or an investment trust.

(4) Subsection (2) above shall not apply unless any gain accruing to company A—

(a) on the disposal of the asset in accordance with the scheme, or

(b) where that disposal occurs after the transfer has taken place, on a disposal of the asset immediately before the transfer,

would be a chargeable gain and would, by virtue of section 10(3), form part of its profits for corporation tax purposes.

(5) In this section "company" and "group" have the meanings which would be given by section 170 if subsections (2)(a) and (9) of that section were omitted.

Textual Amendments

F276 S. 172(3)(a) repealed (with effect in accordance with s. 251(1)(a)(7) of the amending Act) by Finance Act 1994 (c. 9), s. 251(7)(c), **Sch. 26 Pt. VIII(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C121 Ss. 171, 172 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

C127 S. 172 excluded (27.7.1993) by 1993 c. 34, ss. 165(1), 169, **Sch. 17 para. 7(2)(b)**

173 Transfers within a group: trading stock.

(1) Where a member of a group of companies acquires an asset as trading stock from another member of the group, and the asset did not form part of the trading stock of any trade carried on by the other member, the member acquiring it shall be treated for purposes of section 161 as having acquired the asset otherwise than as trading stock and immediately appropriated it for the purposes of the trade as trading stock.

(2) Where a member of a group of companies disposes of an asset to another member of the group, and the asset formed part of the trading stock of a trade carried on by the member disposing of it but is acquired by the other member otherwise than as trading stock of a trade carried on by it, the member disposing of the asset shall be treated for purposes of section 161 as having immediately before the disposal appropriated the asset for some purpose other than the purpose of use as trading stock.

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

174 Disposal or acquisition outside a group.

(1) Where there is a disposal of an asset acquired in relevant circumstances, section 41 shall apply in relation to capital allowances made to the person from which it was acquired (so far as not taken into account in relation to a disposal of the asset by that person), and so on as respects previous transfers of the asset in relevant circumstances.

(2) In subsection (1) above "relevant circumstances" means circumstances in which section **[**F277140A,**]**171 or 172 applied or in which section 171 would have applied but for subsection (2) of that section.

(3) Subsection (1) above shall not be taken as affecting the consideration for which an asset is deemed under section **[**F277140A,**]** 171 or 172 to be acquired.

(4) Schedule 2 shall apply in relation to a disposal of an asset by a company which is or has been a member of a group of companies, and which acquired the asset from another member of the group at a time when both were members of the group, as if all members of the group for the time being were the same person, and as if the acquisition or provision of the asset by the group, so taken as a single person, had been the acquisition or provision of it by the member disposing of it.

(5) Subsection (4) above does not apply where the asset was acquired on a disposal within section 171(2)(c).

Textual Amendments

F277 Words in s. 174(2)(3) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(5)(a)(b)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C128 S. 174 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 21(2)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C129 S. 174(1) modified (16.7.1992) by 1992 c. 48, s. 77, Sch. 17 paras. 6(3)(6), **7**

C130 S. 174(1) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 5**

C131 S. 174(1) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 5** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C132 S. 174(1) modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 4** (with Sch. 7 para. 9(1))

175 Replacement of business assets by members of a group.

(1) Subject to subsection (2) below, for the purposes of sections 152 to 158 all the trades carried on by members of a group of companies shall, for the purposes of corporation tax on chargeable gains, be treated as a single trade F278....

(2) Subsection (1) above does not apply where so much of the consideration for the disposal of the old assets as is applied in acquiring the new assets or the interest in them is so applied by a member of the group which is a dual resident investing company F279... and in this subsection "the old assets" and "the new assets" have the same meanings as in section 152.

[F280(2A) Section 152 **[**F281or 153**]** shall apply where—

(a) the disposal is by a company which, at the time of the disposal, is a member of a group of companies,

(b) the acquisition is by another company which, at the time of the acquisition, is a member of the same group, and

(c) the claim is made by both companies,

as if both companies were the same person.

(2B) Section 152 **[**F282or 153**]** shall apply where a company which is a member of a group of companies but is not carrying on a trade—

(a) disposes of assets (or an interest in assets) used, and used only, for the purposes of the trade which (in accordance with subsection (1) above) is treated as carried on by the members of the group which carry on a trade, or

(b) acquires assets (or an interest in assets) taken into use, and used only, for those purposes,

as if the first company were carrying on that trade.

(2C) **[**F283Neither section 152 nor section 153 shall**]** apply if the acquisition of, or of the interest in, the new assets—

(a) is made by a company which is a member of a group of companies, and

(b) is one to which any of the enactments specified in section 35(3)(d) applies.**]**

(3) Section 154(2) shall apply where the company making the claim is a member of a group of companies as if all members of the group for the time being were the same person (and, in accordance with subsection (1) above, as if all trades carried on by members were the same trade) and so that the gain shall accrue to the member of the group holding the asset concerned on the occurrence of the event mentioned in section 154(2).

(4) Subsection (2) above shall apply where the acquisition took place before 20th March 1990 and the disposal takes place within the period of 12 months beginning with the date of the acquisition or such longer period as the Board may by notice allow with the omission of the words from “or a company" to “the acquisition".

Textual Amendments

F278 Words in s. 175(1) repealed (with effect in accordance with Sch. 29 Pt. VIII(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(4)**

F279 Words in s. 175(2) repealed (with effect in accordance with s. 251(1)(a)(8) of the amending Act) by Finance Act 1994 (c. 9), s. 251(8), **Sch. 26 Pt. VIII(1)**

F280 S. 175(2A)-(2C) inserted (retrospectively as respects s. 175(2A), with application in accordance with s. 48(5) of the amending Act as respects s. 175(2B)(2C)) by Finance Act 1995 (c. 4), **s. 48(1)**(3) (with s. 48(4)(5))

F281 Words in s. 175(2A) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(3)(a)**

F282 Words in s. 175(2B) inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(3)(a)**

F283 Words in s. 175(2C) substituted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(3)(b)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C133 S. 175(2A)(c) restricted (1.5.1995) by Finance Act 1995 (c. 4), **s. 48(4)**

Losses attributable to depreciatory transactions

176 Depreciatory transactions within a group.

(1) This section has effect as respects a disposal of shares in, or securities of, a company ("the ultimate disposal") if the value of the shares or securities has been materially reduced by a depreciatory transaction effected on or after 31st March 1982; and for this purpose "depreciatory transaction" means—

(a) any disposal of assets at other than market value by one member of a group of companies to another, or

(b) any other transaction satisfying the conditions of subsection (2) below,

except that a transaction shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(2) The conditions referred to in subsection (1)(b) above are—

(a) that the company, the shares in which, or securities of which, are the subject of the ultimate disposal, or any 75 per cent. subsidiary of that company, was a party to the transaction, and

(b) that the parties to the transaction were or included 2 or more companies which at the time of the transaction were members of the same group of companies.

(3) Without prejudice to the generality of subsection (1) above, the cancellation of any shares in or securities of one member of a group of companies under section 135 of the [M50]Companies Act 1985 shall, to the extent that immediately before the cancellation those shares or securities were the property of another member of the group, be taken to be a transaction fulfilling the conditions in subsection (2) above.

(4) If the person making the ultimate disposal is, or has at any time been, a member of the group of companies referred to in subsection (1) or (2) above, any allowable loss accruing on the disposal shall be reduced to such extent as **[**[F284]is**]** just and reasonable having regard to the depreciatory transaction, but if the person making the ultimate disposal is not a member of that group when he disposes of the shares or securities, no reduction of the loss shall be made by reference to a depreciatory transaction which took place when that person was not a member of that group.

(5) **[**[F285]A reduction under subsection (4) above shall be made**]** on the footing that the allowable loss ought not to reflect any diminution in the value of the company's assets which was attributable to a depreciatory transaction, but allowance may be made for any other transaction on or after 31st March 1982 which has enhanced the value of the company's assets and depreciated the value of the assets of any other member of the group.

(6) If, under subsection (4) above, a reduction is made in an allowable loss, any chargeable gain accruing on a disposal of the shares or securities of any other company which was a party to the depreciatory transaction by reference to which the reduction was made, being a disposal not later than 6 years after the depreciatory transaction, shall be reduced to such extent as **[**[F286]is**]** just and reasonable having regard to the effect of the depreciatory transaction on the value of those shares or securities at the time of

their disposal, but the total amount of any one or more reductions in chargeable gains made by reference to a depreciatory transaction shall not exceed the amount of the reductions in allowable losses made by reference to that depreciatory transaction.

All such adjustments, whether by way of discharge or repayment of tax, or otherwise, as are required to give effect to the provisions of this subsection may be made at any time.

(7) For the purposes of this section—

(a) "securities" includes any loan stock or similar security whether secured or unsecured,

(b) references to the disposal of assets include references to any method by which one company which is a member of a group appropriates the goodwill of another member of the group, and

(c) a "group of companies" may consist of companies some or all of which are not resident in the United Kingdom.

(8) References in this section to the disposal of shares or securities include references to the occasion of the making of a claim under section 24(2) that the value of shares or securities has become negligible, and references to a person making a disposal shall be construed accordingly.

(9) In any case where the ultimate disposal is not one to which section 35(2) applies, the references above to 31st March 1982 shall be read as references to 6th April 1965.

Textual Amendments

F284 Words in s. 176(4) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 57(1)**

F285 Words in s. 176(5) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 57(2)**

F286 Words in s. 176(6) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 57(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C134 S. 176 modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 18(2)**

C135 S. 176 applied (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 para. 8(9)**

C136 S. 176(1) applied (23.3.1995) by The Exchange Gains and Losses (Transitional Provisions) Regulations 1994 (S.I. 1994/3226), regs. 1(2), **9(6)**

C137 S. 176(2) applied (23.3.1995) by The Exchange Gains and Losses (Transitional Provisions) Regulations 1994 (S.I. 1994/3226), regs. 1(2), **14(4)**

Marginal Citations

M50 1985 c. 6.

177 Dividend stripping.

(1) The provisions of this section apply where one company ("the first company") has a holding in another company ("the second company") and the following conditions are fulfilled—

(a) that the holding amounts to, or is an ingredient in a holding amounting to, 10 per cent. of all holdings of the same class in the second company,

(b) that the first company is not a dealing company in relation to the holding,

(c) that a distribution is or has been made to the first company in respect of the holding, and

(d) that the effect of the distribution is that the value of the holding is or has been materially reduced.

(2) Where this section applies in relation to a holding, section 176 shall apply, subject to subsection (3) below, in relation to any disposal of any shares or securities comprised in the holding, whether the disposal is by the first company or by any other company to which the holding is transferred by a transfer to which section **[**F287140A,**]** 171 or 172 applies, as if the distribution were a depreciatory transaction and, if the companies concerned are not members of a group of companies, as if they were.

(3) The distribution shall not be treated as a depreciatory transaction to the extent that it consists of a payment which is required to be or has been brought into account, for the purposes of corporation tax on chargeable gains, in computing a chargeable gain or allowable loss accruing to the person making the ultimate disposal.

(4) This section shall be construed as one with section 176, and in any case where the ultimate disposal is not one to which section 35(2) applies, the reference in subsection (1)(c) above to a distribution does not include a distribution made before 30th April 1969.

(5) For the purposes of this section a company is "a dealing company" in relation to a holding if a profit on the sale of the holding would be taken into account in computing the company's trading profits.

(6) References in this section to a holding in a company refer to a holding of shares or securities by virtue of which the holder may receive distributions made by the company, but so that—

(a) a company's holdings of different classes in another company shall be treated as separate holdings, and

(b) holdings of securities which differ in the entitlements or obligations they confer or impose shall be regarded as holdings of different classes.

(7) For the purposes of subsection (1) above—

(a) all a company's holdings of the same class in another company are to be treated as ingredients constituting a single holding, and

(b) a company's holding of a particular class shall be treated as an ingredient in a holding amounting to 10 per cent. of all holdings of that class if the aggregate of that holding and other holdings of that class held by connected persons amounts to 10 per cent. of all holdings of that class,

and section 286 shall have effect in relation to paragraph (b) above as if, in subsection (7) of that section, after the words "or exercise control of" in each place where they occur there were inserted the words " or to acquire a holding in ".

Textual Amendments

F287 Words in s. 177(2) inserted (*retrosp.*) by 1992 c. 48, **s. 46(1)(6)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C138 S. 177: modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(1)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993 c. 34, s. 169, **Sch. 17 paras. 5(3)**; modified (27.7.1993 with application as mentioned in s. 165(1)) by 1993, s. 169, Sch. 17 paras. 6(2); modified (27.7.1993 with applicaton as mentioned in s. 165(1)) by 1993 c. 34, **Sch. 17 paras. 6(3)**

[177A F288 Restriction on set-off of pre-entry losses.

Schedule 7A to this Act (which makes provision in relation to losses accruing to a company before the time when it becomes a member of a group of companies and losses accruing on assets held by any company at such a time) shall have effect.]

Textual Amendments

F288 S. 177A inserted (27.7.1993 with application as mentioned in s. 88(3)) by 1993 c. 34, **s. 88(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

[F289 Pre-entry gains

Textual Amendments

F289 S. 177B and cross-heading inserted (with effect in accordance with s. 137(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 137(1)**

177B Restrictions on setting losses against pre-entry gains.

Schedule 7AA to this Act (which makes provision restricting the losses that may be set against the chargeable gains accruing to a company in the accounting period in which it joins a group of companies) shall have effect.]

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Companies leaving groups

178 Company ceasing to be member of group: pre-appointed day cases.

(1) If a company ("the chargeable company") ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a

member of that group of companies, but only if the time of acquisition fell within the period of 6 years ending with the time when the company ceases to be a member of the group; and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group **[**F290in consequence of another member of the group ceasing to exist**]**.

(2) Where 2 or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

(a) the asset, or

(b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the chargeable company shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Where, apart from subsection (5) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (5) and (6) below shall apply.

(5) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(6) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (4) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(7) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (5) above shall have effect as if the market value at that time had been that amount greater.

(8) For the purposes of this section—

(a) 2 or more companies are associated companies if, by themselves, they would form a group of companies,

(b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,

(c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(9) If any of the corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date when it becomes payable then—

(a) a company which on that date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and

(b) a company which owned the asset on that date, or when the chargeable company ceased to be a member of the group,

may, at any time within 2 years from the time when the tax became payable, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover a sum of that amount from the chargeable company.

(10) Notwithstanding any limitation on the time for making assessments, an assessment to corporation tax chargeable in consequence of this section may be made at any time within 6 years from the time when the chargeable company ceased to be a member of the group, and where under this section the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

Textual Amendments

F290 Words in s. 178(1) substituted (*retrosp.*) by 1992 c. 48, **s. 25(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C139 S. 178 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I paras. 4(1)**
S. 178: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 5(2)**

179 Company ceasing to be member of group: post-appointed day cases.

(1) If a company ("the chargeable company") ceases to be a member of a group of companies, this section shall have effect as respects any asset which the chargeable company acquired from another company which was at the time of acquisition a member of that group of companies, but only if the time of acquisition fell within the

period of 6 years ending with the time when the company ceases to be a member of the group; and references in this section to a company ceasing to be a member of a group of companies do not apply to cases where a company ceases to be a member of a group **[**F291in consequence of another member of the group ceasing to exist**]**.

(2) Where 2 or more associated companies cease to be members of the group at the same time, subsection (1) above shall not have effect as respects an acquisition by one from another of those associated companies.

[F292(2A) Where—

(a) a company that has ceased to be a member of a group of companies ("the first group") acquired an asset from another company which was a member of that group at the time of the acquisition,

(b) subsection (2) above applies in the case of that company's ceasing to be a member of the first group so that subsection (1) above does not have effect as respects the acquisition of that asset,

(c) the company that made the acquisition subsequently ceases to be a member of another group of companies ("the second group"), and

(d) there is a connection between the two groups,

subsection (1) above shall have effect in relation to the company's ceasing to be a member of the second group as if it had been the second group of which both companies had been members at the time of the acquisition.

(2B) For the purposes of subsection (2A) above there is a connection between the first group and the second group if, at the time when the chargeable company ceases to be a member of the second group, the company which is the principal company of that group is under the control of—

(a) the company which is the principal company of the first group or, if that group no longer exists, which was the principal company of that group when the chargeable company ceased to be a member of it;

(b) any **[**F293person or persons who control the company mentioned in paragraph (a) above or who have had it under their**]** control at any time in the period since the chargeable company ceased to be a member of the first group; or

(c) any **[**F294person or persons who have, at any time in that period, had under their**]** control either—

(i) a company which would have **[**F295been a person falling**]** within paragraph (b) above if it had continued to exist, or

(ii) a company which would have **[**F295been a person falling**]** within this paragraph (whether by reference to a company which would have **[**F295been a person falling**]** within that paragraph or to a company or series of companies falling within this sub-paragraph).**]**

[F296(2C) This section shall not have effect as respects any asset if, before the time when the chargeable company ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by virtue of section 101A(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.**]**

[F297(2D) This section shall not have effect as respects any asset if, before the time when the chargeable company ceases to be a member of the group or, as the case may be, the second group, an event has already occurred by virtue of which the company falls by

virtue of section 101C(3) to be treated as having sold and immediately reacquired the asset at the time specified in subsection (3) below.**]**

(3) If, when the chargeable company ceases to be a member of the group, the chargeable company, or an associated company also leaving the group, owns, otherwise than as trading stock—

(a) the asset, or

(b) property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

then, subject to subsection (4) below, the chargeable company shall be treated for all the purposes of this Act as if immediately after its acquisition of the asset it had sold, and immediately reacquired, the asset at market value at that time.

(4) Any chargeable gain or allowable loss which, apart from this subsection, would accrue to the chargeable company on the sale referred to in subsection (3) above shall be treated as accruing to the chargeable company **[**[F298]at whichever is the later of the following, that is to say—

(a) the time immediately after the beginning of the accounting period of that company in which or, as the case may be, at the end of which the company ceases to be a member of the group; and

(b) the time when under subsection (3) above it is treated as having reacquired the asset;

[[F299]and sections 403A and 403B of the Taxes Act (limits on group relief) shall have effect accordingly as if the actual circumstances were as they are treated as having been**]**.**]**

(5) Where, apart from subsection (6) below, a company ceasing to be a member of a group by reason only of the fact that the principal company of the group becomes a member of another group would be treated by virtue of subsection (3) above as selling an asset at any time, subsections (6) to (8) below shall apply.

(6) The company in question shall not be treated as selling the asset at that time; but if—

(a) within 6 years of that time the company in question ceases at any time ("the relevant time") to satisfy the following conditions, and

(b) at the relevant time, the company in question, or a company in the same group as that company, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets,

the company in question shall be treated for all the purposes of this Act as if, immediately after its acquisition of the asset, it had sold and immediately reacquired the asset at the value that, at the time of acquisition, was its market value.

(7) Those conditions are—

(a) that the company is a 75 per cent. subsidiary of one or more members of the other group referred to in subsection (5) above, and

(b) that the company is an effective 51 per cent. subsidiary of one or more of those members.

(8) Any chargeable gain or allowable loss accruing to the company on that sale shall be treated as accruing at the relevant time.

(9) Where—

(a) by virtue of this section a company is treated as having sold an asset at any time, and

(b) if at that time the company had in fact sold the asset at market value at that time, then, by virtue of section 30, any allowable loss or chargeable gain accruing on the disposal would have been calculated as if the consideration for the disposal were increased by an amount,

subsections (3) and (6) above shall have effect as if the market value at that time had been that amount greater.

[[F300](9A) Section 416(2) to (6) of the Taxes Act (meaning of control) shall have effect for the purposes of subsection (2B) above as it has effect for the purposes of Part XI of that Act; but a person carrying on a business of banking shall not for the purposes of that subsection be regarded as having control of any company by reason only of having, or of the consequences of having exercised, any rights of that person in respect of loan capital or debt issued or incurred by the company for money lent by that person to the company in the ordinary course of that business.**]**

(10) For the purposes of this section—

(a) 2 or more companies are associated companies if, by themselves, they would form a group of companies,

(b) a chargeable gain is carried forward from an asset to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the asset is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property,

(c) an asset acquired by the chargeable company shall be treated as the same as an asset owned at a later time by that company or an associated company if the value of the second asset is derived in whole or in part from the first asset, and in particular where the second asset is a freehold, and the first asset was a leasehold and the lessee has acquired the reversion.

(11) If any corporation tax assessed on a company in consequence of this section is not paid within 6 months from the date determined under subsection (12) below, then—

(a) a company which on that date, or immediately after the chargeable company ceased to be a member of the group, was the principal company of the group, and

(b) a company which owned the asset on that date, or when the chargeable company ceased to be a member of the group,

may, at any time within 2 years from the date so determined, be assessed and charged (in the name of the chargeable company) to all or any part of that tax; and a company paying any amount of tax under this subsection shall be entitled to recover from the chargeable company a sum of that amount together with any interest paid by the company concerned under section 87A of the Management Act on that amount.

(12) The date referred to in subsection (11) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the chargeable company.

(13) Where under this section the chargeable company is to be treated as having disposed of, and reacquired, an asset, all such recomputations of liability in respect of other disposals, and all such adjustments of tax, whether by way of assessment or by way

of discharge or repayment of tax, as may be required in consequence of the provisions of this section shall be carried out.

Textual Amendments

F291 Words in s. 179(1) substituted (*retrosp.*) by 1992, c. 48, s. 25(1)

F292 S. 179(2A)(2B) inserted (with effect in accordance with s. 49(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 49(1)**

F293 Words in s. 179(2B)(b) substituted (with effect in accordance with s. 139(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 139(1)(a)**

F294 Words in s. 179(2B)(c) substituted (with effect in accordance with s. 139(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 139(1)(b)**

F295 Words in s. 179(2B)(c) substituted (with effect in accordance with s. 139(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 139(1)(c)**

F296 S. 179(2C) inserted (with application in accordance with s. 133(3) of the amending Act) by Finance Act 1998 (c. 36), **s. 133(2)**

F297 S. 179(2D) inserted (with application in accordance with s. 135(5) of the amending Act) by Finance Act 1998 (c. 36), **s. 135(3)**

F298 Words in s. 179(4) substituted (27.7.1993 with effect as mentioned in s. 89(2)) by 1993 c. 34, **s. 89(1)(2)**

F299 Words in s. 179(4) substituted (with effect in accordance with Sch. 7 para. 9 of the amending Act) by Finance (No. 2) Act 1997 (c. 58), **Sch. 7 para. 8**

F300 S. 179(9A) inserted (with effect in accordance with s. 49(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 49(2)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C140 S. 179 excluded (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(1)**
S. 179: modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 4(2)**; modified (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 51(2)**

C141 S. 179 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 8(1)-(3)**

C142 S. 179 applied (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 8(5)**

C143 S. 179 restricted (3.5.1994) by Finance Act 1994 (c. 9), **s. 250(2)**

C144 S. 179 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 8(1)(2)** (with Sch. 4 paras. 8(3), 14); S.I. 1994/2189, art. 2, Sch.

C145 S. 179 applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 8(4)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C146 S. 179 modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), Sch. 3 para. 5(1)**(2)** (with Sch. 3 para. 5(4))

C147 S. 179 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 6** (with Sch. 7 para. 9(1))

C148 S. 179 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **3(4)**, **4(2)**

Commencement Information

I4 s. 179: 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

180 Transitional provisions.

(1) Subject to the following provisions of this section—

(a) section 178 has effect where the chargeable company referred to in section 178(4) ceases to be a member of the group in an accounting period beginning after 5th April 1992, but shall not apply where section 179 has effect, and

(b) section 179 has effect where the accounting period in which the chargeable company referred to in section 179(5) ceases to be a member of the group ends after such day as the Treasury by order appoint,

and in any case where section 178 or section 179 has effect in respect of tax for any accounting period, that section shall also have effect in respect of tax for earlier accounting periods, to the exclusion of the corresponding enactments repealed by this Act.

(2) Subject to subsection (1) above—

(a) section 178(5) to (7) apply where a company which apart from section 278(3C) of the [M51]Income and Corporation Taxes Act 1970 would by virtue of subsection (3) of that section have been treated as selling an asset (unless it has already been treated, by virtue of section 278(3C), as if it had sold the asset in question), and

(b) section 179(6) to (9) apply where a company which, apart from section 278(3C) of the [M52]Income and Corporation Taxes Act 1970 or section 178(4) of this Act, would by virtue of section 278(3) or section 178(3) have been treated as selling an asset (unless it has already been treated, by virtue of section 278(3C) or section 178(4), as if it had sold the asset in question).

(3) Where by virtue of section 138(8) of the [M53]Finance Act 1989 a company which, by virtue of the substitution of the new definition for the old definition, ceased to be a member of a group at the beginning of 14th March 1989 was not treated as selling an asset at any time unless the conditions in section 138(9) became satisfied, then that company shall continue not to be treated as selling the asset at that time unless the conditions in subsection (4) below become satisfied, assuming for that purpose that the old definition applies.

(4) Those conditions are—

(a) that for the purposes of section 178 or 179 the company in question ceases at any time ("the relevant time") to be a member of the group referred to in subsection (3) above,

(b) that, at the relevant time, the company in question, or an associated company also leaving that group at that time, owns otherwise than as trading stock the asset or property to which a chargeable gain has been carried forward from the asset on a replacement of business assets, and

(c) that the time of acquisition referred to in section 178(1) or 179(1) fell within the period of 6 years ending with the relevant time.

(5) Where, under any compromise or arrangement agreed to on any date before 14th March 1989 in pursuance of section 425 of the [M54]Companies Act 1985 and sanctioned by the court, one company acquires at any time, directly or indirectly, an interest in ordinary share capital of another company and immediately after that time—

(a) under the old definition the 2 companies are, by virtue of that acquisition, members of a group for the purposes of the group provisions, but

(b) the second company is not an effective 51 per cent. subsidiary of the first company,

subsection (6) below applies; and in that subsection those companies and any other members of the group are referred to as "relevant companies".

(6) In respect of the period beginning with the time of acquisition and ending with—

(a) the expiry of the 6 months beginning with the date of the agreement, or

(b) if earlier, the date when, under the old definition, the other company ceases for the purposes of the group provisions to be a member of the group referred to in subsection (5)(a) above,

the old definition shall apply in relation to the relevant companies for the purposes of the group provisions and, in relation to those companies, the reference in subsection (3) above to 14th March 1989 shall be read as a reference to the day following the end of that period.

(7) In subsections (3) to (6) above—

"arrangement" has the same meaning as in section 425 of the [M55]Companies Act 1985,

"effective 51 per cent. subsidiary" has the meaning given by section 170(7);

"group provisions" means sections 170 to 181 (excluding subsections (3) to (6) above);

"the new definition" means section 170; and

"the old definition" means section 272 of the [M56]Income and Corporation Taxes Act 1970 as it had effect on 13th March 1989,

and section 178(8) or 179(10) shall apply for the purposes of those subsections.

Subordinate Legislation Made

P1 S. 180(1)(b): 30.9.1993 appointed for the purposes of s. 179 by S.I. 1992/3066, **art. 2(2)(d)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Marginal Citations

M51 1970 c. 10.
M52 1970 c. 10.
M53 1989 c. 26.
M54 1985 c. 6.
M55 1985 c. 6.
M56 1970 c. 10.

181 Exemption from charge under 178 or 179 in the case of certain mergers.

(1) Subject to the following provisions of this section, neither section 178 nor section 179 shall apply in a case where—

(a) as part of a merger, a company ("company A") ceases to be a member of a group of companies ("the A group"); and

(b) [F301]... the merger was carried out for bona fide commercial reasons and [F301]... the avoidance of liability to tax was not the main or one of the main purposes of the merger.

(2) In this section "merger" means an arrangement (which in this section includes a series of arrangements)—

(a) whereby one or more companies ("the acquiring company" or, as the case may be, "the acquiring companies") none of which is a member of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business which, before the arrangement took effect, was carried on by company A; and

(b) whereby one or more members of the A group acquires or acquire, otherwise than with a view to their disposal, one or more interests in the whole or part of the business or each of the businesses which, before the arrangement took effect, was carried on either by the acquiring company or acquiring companies or by a company at least 90 per cent. of the ordinary share capital of which was then beneficially owned by 2 or more of the acquiring companies; and

(c) in respect of which the conditions in subsection (4) below are fulfilled.

(3) For the purposes of subsection (2) above, a member of a group of companies shall be treated as carrying on as one business the activities of that group.

(4) The conditions referred to in subsection (2)(c) above are—

(a) that not less than 25 per cent. by value of each of the interests acquired as mentioned in paragraphs (a) and (b) of subsection (2) above consists of a holding of ordinary share capital, and the remainder of the interest, or as the case may be of each of the interests, acquired as mentioned in subsection (2)(b), consists of a holding of share capital (of any description) or debentures or both; and

(b) that the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(a) above is substantially the same as the value or, as the case may be, the aggregate value of the interest or interests acquired as mentioned in subsection (2)(b) above; and

(c) that the consideration for the acquisition of the interest or interests acquired by the acquiring company or acquiring companies as mentioned in subsection (2)(a) above, disregarding any part of that consideration which is small by comparison with the total, either consists of, or is applied in the acquisition of, or consists partly of and as to the balance is applied in the acquisition of, the interest or interests acquired by members of the A group as mentioned in subsection (2)(b) above;

and for the purposes of this subsection the value of an interest shall be determined as at the date of its acquisition.

(5) Notwithstanding the provisions of section 170(2)(a), references in this section to a company includes references to a company resident outside the United Kingdom.

Textual Amendments

F301 Words in s. 181(1)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 58, **Sch. 41 Pt. V(10)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Restriction on indexation allowance for groups and associated companies

F302 182 Disposals of debts.

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Textual Amendments

F302 Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

F302 183 Disposals of shares.

. . . . . .

Textual Amendments

F302 Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

F302 184 Definitions and other provisions supplemental to sections 182 and 183.

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Textual Amendments

F302 Ss. 182-184 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Non-resident and dual resident companies

185 Deemed disposal of assets on company ceasing to be resident in U.K.

(1) This section and section 187 apply to a company if, at any time ("the relevant time"), the company ceases to be resident in the United Kingdom.

(2) The company shall be deemed for all purposes of this Act—

(a) to have disposed of all its assets, other than assets excepted from this subsection by subsection (4) below, immediately before the relevant time; and

(b) immediately to have reacquired them,

at their market value at that time.

(3) Section 152 shall not apply where the company—

(a) has disposed of the old assets, or of its interest in those assets, before the relevant time; and

(b) acquires the new assets, or its interest in those assets, after that time,

unless the new assets are excepted from this subsection by subsection (4) below.

(4) If at any time after the relevant time the company carries on a trade in the United Kingdom through a branch or agency—

(a) any assets which, immediately after the relevant time, are situated in the United Kingdom and are used in or for the purposes of the trade, or are used or held for the purposes of the branch or agency, shall be excepted from subsection (2) above; and

(b) any new assets which, after that time, are so situated and are so used or so held shall be excepted from subsection (3) above;

and references in this subsection to assets situated in the United Kingdom include references to exploration or exploitation assets and to exploration or exploitation rights.

(5) In this section—

(a) "designated area", "exploration or exploitation activities" and "exploration or exploitation rights" have the same meanings as in section 276;

(b) "exploration or exploitation assets" means assets used or intended for use in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(c) "the old assets" and "the new assets" have the same meanings as in section 152;

and a company shall not be regarded for the purposes of this section as ceasing to be resident in the United Kingdom by reason only that it ceases to exist.

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

C149 S. 185 excluded (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **3(4)**

F303 186 Deemed disposal of assets on company ceasing to be liable to U.K. taxation.

. . . . . .

Textual Amendments

F303 S. 186 repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9), **Sch. 26 Pt. VIII(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

187 Postponement of charge on deemed disposal under section 185 or 186.

(1) If—

(a) immediately after the relevant time, a company to which this section applies by virtue of section 185 [F304]... ("the company") is a 75 per cent. subsidiary of another company ("the principal company") which is resident in the United Kingdom; and

(b) the principal company and the company so elect, by notice given to the inspector within 2 years after that time,

this Act shall have effect in accordance with the following provisions.

(2) Any allowable losses accruing to the company on a deemed disposal of foreign assets shall be set off against the chargeable gains so accruing and—

(a) that disposal shall be treated as giving rise to a single chargeable gain equal to the aggregate of those gains after deducting the aggregate of those losses; and

(b) the whole of that gain shall be treated as not accruing to the company on that disposal but an equivalent amount ("the postponed gain") shall be brought into account in accordance with subsections (3) and (4) below.

(3) If at any time within 6 years after the relevant time the company disposes of any assets ("relevant assets") the chargeable gains on which were taken into account in arriving at the postponed gain, there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole or the appropriate proportion of the postponed gain so far as not already taken into account under this subsection or subsection (4) below.

In this subsection "the appropriate proportion" means the proportion which the chargeable gain taken into account in arriving at the postponed gain in respect of the part of the relevant assets disposed of bears to the aggregate of the chargeable gains so taken into account in respect of the relevant assets held immediately before the time of the disposal.

(4) If at any time after the relevant time—

(a) the company ceases to be a 75 per cent. subsidiary of the principal company on the disposal by the principal company of ordinary shares of the company;

(b) after the company has ceased to be such a subsidiary otherwise than on such a disposal, the principal company disposes of such shares; or

(c) the principal company ceases to be resident in the United Kingdom,

there shall be deemed to accrue to the principal company as a chargeable gain on that occasion the whole of the postponed gain so far as not already taken into account under this subsection or subsection (3) above.

(5) If at any time—

(a) the company has allowable losses which have not been allowed as a deduction from chargeable gains; and

(b) a chargeable gain accrues to the principal company under subsection (3) or (4) above,

then, if and to the extent that the principal company and the company so elect by notice given to the inspector within 2 years after that time, those losses shall be allowed as a deduction from that gain.

(6) In this section—

"deemed disposal" means a disposal which, by virtue of section 185(2) F305... is deemed to have been made;

"foreign assets" means any assets of the company which, immediately after the relevant time, are situated outside the United Kingdom and are used in or for the purposes of a trade carried on outside the United Kingdom;

"ordinary share" means a share in the ordinary share capital of the company;

"the relevant time" has the meaning given by section 185(1) F305... .

(7) For the purposes of this section a company is a 75 per cent. subsidiary of another company if and so long as not less than 75 per cent. of its ordinary share capital is owned directly by that other company.

Textual Amendments

F304 Words in s. 187(1)(a) repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9)(a), **Sch. 26 Pt. VIII(1)**

F305 Words in s. 187(6) repealed (with effect in accordance with s. 251(1)(a)(9) of the amending Act) by Finance Act 1994 (c. 9), s. 251(9)(b), **Sch. 26 Pt. VIII(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

188 Dual resident companies: deemed disposal of certain assets.

F306 . . . . . .

Textual Amendments

F306 S. 188 repealed (retrospective to 30.11.1993) by Finance Act 1994 (c. 9), s. 251(1)(a)(10), **Sch. 26 Pt. 8(1)**

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Recovery of tax otherwise than from tax-payer company

189 Capital distribution of chargeable gains: recovery of tax from shareholder.

(1) This section applies where a person who is connected with a company resident in the United Kingdom receives or becomes entitled to receive in respect of shares in the company any capital distribution from the company, other than a capital distribution representing a reduction of capital, and—

(a) the capital so distributed derives from the disposal of assets in respect of which a chargeable gain accrued to the company; or

(b) the distribution constitutes such a disposal of assets;

and that person is referred to below as "the shareholder".

(2) If the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues included any amount in respect of chargeable gains, and any of the tax assessed on the company for that period is not paid within 6 months from the date determined under subsection (3) below, the shareholder may by an assessment made within 2 years from that date be assessed and charged (in the name of the company) to an amount of that corporation tax—

(a) not exceeding the amount or value of the capital distribution which the shareholder has received or become entitled to receive; and

(b) not exceeding a proportion equal to the shareholder's share of the capital distribution made by the company of corporation tax on the amount of that gain at the rate in force when the gain accrued.

(3) The date referred to in subsection (2) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment was made on the company.

(4) Where the shareholder pays any amount of tax under this section, he shall be entitled to recover from the company a sum equal to that amount together with any interest paid by him under section 87A of the Management Act on that amount.

(5) The provisions of this section are without prejudice to any liability of the shareholder in respect of a chargeable gain accruing to him by reference to the capital distribution as constituting a disposal of an interest in shares in the company.

(6) With respect to chargeable gains accruing in accounting periods ending on or before such day as the Treasury may be order appoint this section shall have effect—

(a) with the substitution for the words in subsection (3) after "above" of the words " is the date when the tax becomes payable by the company "; and

(b) with the omission of the words in subsection (4) from "together" to the end of the subsection.

(7) In this section "capital distribution" has the same meaning as in section 122.

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Commencement Information

I5 S. 189: 30.9.1993 appointed for the purposes of s. 189 by S.I. 1992/3066, **art. 2(2)(d)**

190 Tax on one member of group recoverable from another member.

(1) If at any time a chargeable gain accrues to a company which at that time is a member of a group of companies and any of the corporation tax assessed on the company for the accounting period in which the chargeable gain accrues is not paid within 6 months

from the date determined under subsection (2) below by the company, then, if the tax so assessed included any amount in respect of chargeable gains—

(a) a company which was at the time when the gain accrued the principal company of the group, and

(b) any other company which in any part of the period of 2 years ending with that time was a member of that group of companies and owned the asset disposed of or any part of it, or where that asset is an interest or right in or over another asset, owned either asset or any part of either asset,

may at any time within 2 years from the date determined under subsection (2) below be assessed and charged (in the name of the company to whom the chargeable gain accrued) to an amount of that corporation tax not exceeding corporation tax on the amount of that gain at the rate in force when the gain accrued.

(2) The date referred to in subsection (1) above is whichever is the later of—

(a) the date when the tax becomes due and payable by the company; and

(b) the date when the assessment is made on the company.

(3) A company paying any amount of tax under subsection (1) above shall be entitled to recover a sum of that amount—

(a) from the company to which the chargeable gain accrued, or

(b) if that company is not the company which was the principal company of the group at the time when the chargeable gain accrued, from that principal company,

and a company paying any amount under paragraph (b) above shall be entitled to recover a sum of that amount from the company to which the chargeable gain accrued, and so far as it is not so recovered, to recover from any company which is for the time being a member of the group and which has while a member of the group owned the asset disposed of or any part of it (or where that asset is an interest or right in or over another asset, owned either asset or any part of it) such proportion of the amount unrecovered as is just having regard to the value of the asset at the time when the asset, or an interest or right in or over it, was disposed of by that company.

(4) Any reference in subsection (3) above to an amount of tax includes a reference to any interest paid under section 87A of the Management Act on that amount.

(5) Section 170 shall apply for the interpretation of this section as it applies for the interpretation of sections 171 to 181.

(6) In relation to any chargeable gains accruing in accounting periods ending on or before such day as the Treasury may by order appoint this section shall have effect—

(a) with the substitution for the words in subsection (2) after “above" of the words “ is the date when the tax becomes payable by the company ”; and

(b) with the omission of subsection (4).

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Commencement Information

I6 S. 190: 30.9.1993 appointed for the purposes of s. 190 by S.I. 1992/3066, **art. 2(2)(d)**

191 Tax on non-resident company recoverable from another member of group or from controlling director.

(1) This section applies where—

(a) a chargeable gain has accrued to a company not resident in the United Kingdom (the tax-payer company) on the disposal of an asset on or after 14th March 1989,

(b) the gain forms part of its chargeable profits for corporation tax purposes by virtue of section 10(3), and

(c) any of the corporation tax assessed on the company for the accounting period in which the gain accrued is not paid within 6 months from the time when it becomes payable.

(2) The Board may, at any time before the end of the period of 3 years beginning with the time when the amount of corporation tax for the accounting period in which the chargeable gain accrued is finally determined, serve on any person to whom subsection (4) below applies a notice—

(a) stating the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued and the date when the tax became payable, and

(b) requiring that person to pay the relevant amount within 30 days of the service of the notice.

(3) For the purposes of subsection (2) above the relevant amount is the lesser of—

(a) the amount which remains unpaid of the corporation tax assessed on the tax-payer company for the accounting period in which the gain accrued, and

(b) an amount equal to corporation tax on the amount of the chargeable gain at the rate in force when the gain accrued.

(4) This subsection applies to the following persons—

(a) any company which is, or during the period of 12 months ending with the time when the gain accrued, was, a member of the same group as the tax-payer company, and

(b) any person who is, or during that period was, a controlling director of the tax-payer company or of a company which has, or within that period had, control over the tax-payer company.

This subsection shall have effect in any case where the gain accrued before 13th March 1990 with the substitution of " beginning with 14th March 1989 and " for "of 12 months".

(5) Any amount which a person is required to pay by a notice under this section may be recovered from him as if it were tax due and duly demanded of him; and he may recover any such amount paid by him from the tax-payer company.

(6) A payment in pursuance of a notice under this section shall not be allowed as a deduction in computing any income, profits or losses for any tax purposes.

(7) In this section—

"director", in relation to a company, has the meaning given by subsection (8) of section 168 of the Taxes Act (read with subsection (9) of that section) and includes any person falling within subsection (5) of section 417 of that Act (read with subsection (6) of that section);

"controlling director", in relation to a company, means a director of the company who has control of it (construing control in accordance with section 416 of the Taxes Act);

"group" has the meaning which would be given by section 170 if in that section references to residence in the United Kingdom were omitted and for references to 75 per cent. subsidiaries there were substituted references to 51 per cent. subsidiaries.

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

Demergers

192 Tax exempt distributions.

(1) This section has effect for facilitating certain transactions whereby trading activities carried on by a single company or group are divided so as to be carried on by 2 or more companies not belonging to the same group or by 2 or more independent groups.

(2) Where a company makes an exempt distribution which falls within section 213(3)(a) of the Taxes Act—

(a) the distribution shall not be a capital distribution for the purposes of section 122; and

(b) sections 126 to 130 shall, with the necessary modifications, apply as if that company and the subsidiary whose shares are transferred were the same company and the distribution were a reorganisation of its share capital.

(3) Subject to subsection (4) below, neither section 178 nor 179 shall apply in a case where a company ceases to be a member of a group by reason only of an exempt distribution.

(4) Subsection (3) does not apply if within 5 years after the making of the exempt distribution there is chargeable payment; and the time for making an assessment under section 178 or 179 by virtue of this subsection shall not expire before the end of 3 years after the making of the chargeable payment.

(5) In this section—

"chargeable payment" has the meaning given in section 214(2) of the Taxes Act;

"exempt distribution" means a distribution which is exempt by virtue of section 213(2) of that Act; and

"group" means a company which has one or more 75 per cent. subsidiaries together with that or those subsidiaries.

(6) In determining for the purposes of this section whether one company is a 75 per cent. subsidiary of another, the other company shall be treated as not being the owner of—

(a) any share capital which it owns directly in a body corporate if a profit on a sale of the shares would be treated as a trading receipt of its trade; or

(b) any share capital which it owns indirectly and which is owned directly by a body corporate for which a profit on the sale of the shares would be a trading receipt.

Modifications etc. (not altering text)

C117 Ss. 170-192 restricted (27.7.1999) by Commonwealth Development Corporation Act 1999 (c. 20), Sch. 3 paras. 1, **4(1)**

CHAPTER II

OIL AND MINING INDUSTRIES

Oil exploration and exploitation

F307 193 Roll-over relief not available for gains on oil licences.

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Textual Amendments

F307 S. 193 repealed (with effect in accordance with s. 103(2) of the amending Act) by Finance Act 1999 (c. 16), s. 103(1), **Sch. 20 Pt. IV(2)**

194 Disposals of oil licences relating to undeveloped areas.

(1) In this section any reference to a disposal (including a part disposal) is a reference to a disposal made by way of a bargain at arm's length.

(2) If, at the time of the disposal, the licence relates to an undeveloped area, then, to the extent that the consideration for the disposal consists of—

(a) another licence which at that time relates to an undeveloped area or an interest in another such licence, or

(b) an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the licence disposed of,

the value of that consideration shall be treated as nil for the purposes of this Act.

(3) If the disposal of a licence which, at the time of the disposal, relates to an undeveloped area is part of a larger transaction under which one party makes to another disposals of 2 or more licences, each of which at the time of the disposal relates to an undeveloped area, the reference in subsection (2)(b) above to the licensed area in relation to the licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those 2 or more licences.

(4) In relation to a disposal of a licence which, at the time of the disposal, relates to an undeveloped area, being a disposal—

(a) which is a part disposal of the licence in question, and

(b) part but not the whole of the consideration for which falls within paragraph (a) or paragraph (b) of subsection (2) above,

section 42 shall not apply unless the amount or value of the part of the consideration which does not fall within one of those paragraphs is less than the aggregate of the amounts which, if the disposal were a disposal of the whole of the licence rather than a part disposal, would be—

(i) the relevant allowable expenditure, as defined in section 53; and

(ii) the indexation allowance on the disposal.

(5) Where section 42 has effect in relation to such a disposal as is referred to in subsection (4) above, it shall have effect as if, for subsection (2) thereof, there were substituted the following subsection—

"(2) The apportionment shall be made by reference to—

(a) the amount or value of the consideration for the disposal on the one hand (call that amount or value A), and

(b) the aggregate referred to in section 194(4) on the other hand (call that aggregate C),

and the fraction of the said sums allowable as a deduction in computing the amount of the gain (if any) accruing on the disposal shall be—

$$\frac{A}{C}$$

and the remainder shall be attributed to the part of the property which remains undisposed of."

195 Allowance of certain drilling expenditure etc.

(1) On the disposal of a licence, relevant qualifying expenditure incurred by the person making the disposal—

(a) in searching for oil anywhere in the licensed area, or

(b) in ascertaining the extent or characteristics of any oil-bearing area the whole or part of which lies in the licensed area or what the reserves of oil of any such oil-bearing area are,

shall be treated as expenditure falling within section 38(1)(b).

(2) Expenditure incurred as mentioned in subsection (1) above is relevant expenditure if, and only if—

(a) it is expenditure of a capital nature on scientific research; and

(b) either it was allowed or allowable under section 137 of the 1990 Act (capital expenditure on scientific research) for a relevant chargeable period which, or the basis year for which, began before the date of the disposal or it would have been so allowable if the trading condition had been fulfilled; and

(c) the disposal is an occasion by virtue of which section 138 of the 1990 Act (termination of user of assets representing scientific research expenditure of a capital nature) applies in relation to the expenditure or would apply if the trading condition had been fulfilled and the expenditure had been allowed accordingly.

(3) In subsection (2) above and subsection (4) below, the expression "if the trading condition had been fulfilled" means, in relation to expenditure of a capital nature

on scientific research, if, after the expenditure was incurred but before the disposal concerned was made, the person incurring the expenditure had set up and commenced a trade connected with that research; and in subsection (2)(b) above—

"relevant chargeable period" has the same meaning as in section 137 of the 1990 Act; and

"basis year" has the same meaning as in subsection (6)(c) of that section.

(4) Relevant expenditure is qualifying expenditure only to the extent that it does not exceed the trading receipt which, by reason of the disposal—

(a) is treated as accruing under section 138(2) of the 1990 Act; or

(b) would be treated as so accruing if the trading condition had been fulfilled and the expenditure had been allowed accordingly.

(5) On the disposal of a licence, sections 37 and 41 shall apply in relation to any such trading receipt as is mentioned in subsection (4)(a) above as if it were a balancing charge falling to be made by reference to the disposal.

(6) Where, on the disposal of a licence, subsection (1) above has effect in relation to any relevant qualifying expenditure which had not in fact been allowed or become allowable as mentioned in subsection (2)(b) above—

(a) no allowance shall be made in respect of that expenditure under section 137 of the 1990 Act; and

(b) no deduction shall be allowed in respect of it under section 138(3) of that Act.

(7) Where, on the disposal of a licence which is a part disposal, subsection (1) above has effect in relation to any relevant qualifying expenditure, then, for the purposes of section 42, that expenditure shall be treated as wholly attributable to what is disposed of (and, accordingly, shall not be apportioned as mentioned in that section).

196 Interpretation of sections 194 and 195.

(1) For the purposes of section 194, a **[**F308UK licence**]** relates to an undeveloped area at any time if—

(a) for no part of the licensed area has consent for development been granted to the licensee by the Secretary of State on or before that time; and

(b) for no part of the licensed area has a programme of development been served on the licensee or approved by the Secretary of State on or before that time.

[F309(1A) For the purposes of section 194 a licence other than a UK licence relates to an undeveloped area at any time if, at that time—

(a) no development has actually taken place in any part of the licensed area; and

(b) no condition for the carrying out of development anywhere in that area has been satisfied—

(i) by the grant of any consent by the authorities of a country or territory exercising jurisdiction in relation to the area; or

(ii) by the approval or service on the licensee, by any such authorities, of any programme of development.**]**

(2) Subsections (4) and (5) of section 36 of the M57Finance Act 1983 (meaning of "development") shall have effect in relation to **[**F310subsections (1) and (1A) above**]** as they have effect in relation to subsection (2) of that section.

(3) In relation to a licence under the [M58]Petroleum (Production) Act (Northern Ireland) 1964 any reference in subsection (1) above to the Secretary of State shall be construed as a reference to the Department of Economic Development.

(4) In relation to a disposal to which section 194 applies of a licence under which the buyer acquires an interest in the licence only so far as it relates to part of the licensed area, any reference in subsection (1) or subsection (3) of that section or subsection (1) above to the licensed area shall be construed as a reference only to that part of the licensed area to which the buyer's acquisition relates.

[[F311](5) In sections 194 and 195 and this section—

"foreign oil concession" means any right to search for or win overseas petroleum, being a right conferred or exercisable (whether or not by virtue of a licence) in relation to a particular area;

"interest" in relation to a licence, includes, where there is an agreement which—

(a) relates to oil from the whole or any part of the licensed area, and

(b) was made before the extraction of the oil to which it relates,

any entitlement under that agreement to, or to a share of, either that oil or the proceeds of its sale;

"licence" means any UK licence or foreign oil concession;

"licensed area" (subject to subsection (4) above)—

(a) in relation to a UK licence, has the same meaning as in Part I of the [M59]Oil Taxation Act 1975; and

(b) in relation to a foreign oil concession, means the area to which the concession applies;

"licensee"—

(a) in relation to a UK licence, has the same meaning as in Part I of the Oil Taxation Act 1975; and

(b) in relation to a foreign oil concession, means the person with the concession or any person having an interest in it;

"oil"—

(a) except in relation to a UK licence, means any petroleum (within the meaning of **[**[F312]Part I of the Petroleum Act 1998**]**); and

(b) in relation to such a licence, has the same meaning as in Part I of the Oil Taxation Act 1975;

"overseas petroleum" means any oil that exists in its natural condition at a place to which neither **[**[F312]Part I of the Petroleum Act 1998**]** nor the [M60]Petroleum (Production) Act (Northern Ireland) 1964 applies; and

"UK licence" means a licence within the meaning of Part I of the [M61]Oil Taxation Act 1975.

(5A) References in sections 194 and 195 to a part disposal of a licence shall include references to the disposal of any interest in a licence.**]**

(6) In section 194—

(a) "exploration work", in relation to any area, means work carried out for the purpose of searching for oil anywhere in that area;

(b) "appraisal work", in relation to any area, means work carried out for the purpose of ascertaining the extent or characteristics of any oil-bearing area

the whole or part of which lies in the area concerned or what the reserves of oil of any such oil-bearing area are.

Textual Amendments

F308 Words in s. 196(1) substituted (with effect in accordance with s. 181(4) of the amending Act) by Finance Act 1996 (c. 8), **s. 181(1)**

F309 S. 196(1A) inserted (with effect in accordance with s. 181(4) of the amending Act) by Finance Act 1996 (c. 8), **s. 181(2)**

F310 Words in s. 196(2) substituted (with effect in accordance with s. 181(4) of the amending Act) by Finance Act 1996 (c. 8), **s. 181(2)**

F311 S. 196(5)(5A) substituted for s. 196(5) (retrospectively and with effect in accordance with s. 181(4)(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 181(3)**

F312 Words in s. 196(5) substituted (15.2.1999) by Petroleum Act 1998 (c. 17), s. 52(4), **Sch. 4 para. 32(3)** (with Sch. 3); S.I. 1999/161, art. 2(1)

Marginal Citations

M57 1983 c. 28.

M58 1964 c. 28 (N.I.).

M59 1975 c. 22.

M60 1964 c. 28 (N.I.).

M61 1975 c. 22.

197 Disposals of interests in oil fields etc: ring fence provisions.

(1) This section applies where in pursuance of a transfer by a participator in an oil field of the whole or part of his interest in the field, there is—

(a) a disposal of an interest in oil to be won from the oil field; or

(b) a disposal of an asset used in connection with the field;

and section 12 of the [M62]Oil Taxation Act 1975 (interpretation of Part I of that Act) applies for the interpretation of this subsection and the reference to the transfer by a participator in an oil field of the whole or part of his interest in the field shall be construed in accordance with paragraph 1 of Schedule 17 to the [M63]Finance Act 1980.

(2) In this section "material disposal" means—

(a) a disposal falling within paragraph (a) or paragraph (b) of subsection (1) above; or

(b) the sale of an asset referred to in section 178(3) or 179(3) where the asset was acquired by the chargeable company (within the meaning of that section) on a disposal falling within one of those paragraphs.

(3) For any chargeable period in which a chargeable gain or allowable loss accrues to any person ("the chargeable person") on a material disposal (whether taking place in that period or not), subject to subsection (6) below there shall be aggregated—

(a) the chargeable gains accruing to him in that period on such disposals, and

(b) the allowable losses accruing to him in that period on such disposals,

and the lesser of the 2 aggregates shall be deducted from the other to give an aggregate gain or, as the case may be, an aggregate loss for that chargeable period.

(4) For the purposes of tax in respect of chargeable gains—

(a) the several chargeable gains and allowable losses falling within paragraphs (a) and (b) of subsection (3) above shall be left out of account; and

(b) the aggregate gain or aggregate loss referred to in that subsection shall be treated as a single chargeable gain or allowable loss accruing to the chargeable person in the chargeable period concerned on the notional disposal of an asset; and

(c) if in any chargeable period there is an aggregate loss, then, except as provided by subsection (5) below, it shall not be allowable as a deduction against any chargeable gain arising in that or any later period, other than an aggregate gain treated as accruing in a later period by virtue of paragraph (b) above (so that the aggregate gain of that later period shall be reduced or extinguished accordingly); and

(d) if in any chargeable period there is an aggregate gain, no loss shall be deducted from it except in accordance with paragraph (c) above; and

(e) without prejudice to any indexation allowance which was taken into account in determining an aggregate gain or aggregate loss under subsection (3) above, no further indexation allowance shall be allowed on a notional disposal referred to in paragraph (b) above.

(5) In any case where—

(a) by virtue of subsection (4)(b) above, an aggregate loss is treated as accruing to the chargeable person in any chargeable period, and

(b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

the whole, or such portion as is specified in the claim, of the aggregate loss shall be treated for the purposes of this Act as an allowable loss arising in that chargeable period otherwise than on a material disposal.

(6) In any case where a loss accrues to the chargeable person on a material disposal made to a person who is connected with him—

(a) the loss shall be excluded from those referred to in paragraph (b) of subsection (3) above and, accordingly, shall not be aggregated under that subsection; and

(b) except as provided by subsection (7) below, section 18 shall apply in relation to the loss as if, in subsection (3) of that section, any reference to a disposal were a reference to a disposal which is a material disposal; and

(c) to the extent that the loss is set against a chargeable gain by virtue of paragraph (b) above, the gain shall be excluded from those referred to in paragraph (a) of subsection (3) above and, accordingly, shall not be aggregated under that subsection.

(7) In any case where—

(a) the losses accruing to the chargeable person in any chargeable period on material disposals to a connected person exceed the gains accruing to him in that chargeable period on material disposals made to that person at a time when they are connected persons, and

(b) before the expiry of the period of 2 years beginning at the end of the chargeable period concerned, the chargeable person makes a claim under this subsection,

the whole, or such part as is specified in the claim, of the excess referred to in paragraph (a) above shall be treated for the purposes of section 18 as if it were a loss accruing on a disposal in that chargeable period, being a disposal which is not a

material disposal and which is made by the chargeable person to the connected person referred to in paragraph (a) above.

(8) Where a claim is made under subsection (5) or subsection (7) above, all such adjustments shall be made whether by way of discharge or repayment of tax or otherwise, as may be required in consequence of the operation of that subsection.

Marginal Citations

M62 1975 c. 22.

M63 1980 c. 48.

198 Replacement of business assets used in connection with oil fields.

(1) If the consideration which a person obtains on a material disposal is applied, in whole or in part, as mentioned in subsection (1) of section 152 or 153, that section shall not apply unless the new assets are taken into use, and used only, for the purposes of the ring fence trade.

(2) Subsection (1) above has effect notwithstanding subsection (8) of section 152.

(3) Where section 152 or 153 applies in relation to any of the consideration on a material disposal, the asset which constitutes the new assets for the purposes of that section shall be conclusively presumed to be a depreciating asset, and section 154 shall have effect accordingly, except that—

(a) the reference in subsection (2)(b) of that section to a trade carried on by the claimant shall be construed as a reference solely to his ring fence trade; and

(b) subsections (4) to (7) of that section shall be omitted.

(4) In any case where sections 152 to 154 have effect in accordance with subsections (1) to (3) above, the operation of section 175 shall be modified as follows—

(a) only those members of a group which actually carry on a ring fence trade shall be treated for the purposes of those sections as carrying on a single trade which is a ring fence trade; and

(b) only those activities which, in relation to each individual member of the group, constitute its ring fence trade shall be treated as forming part of that single trade.

(5) In this section—

(a) "material disposal" has the meaning assigned to it by section 197; and

(b) "ring fence trade" means a trade consisting of either or both of the activities mentioned in paragraphs (a) and (b) of subsection (1) of section 492 of the Taxes Act.

199 Exploration or exploitation assets: deemed disposals

(1) Where an exploration or exploitation asset which is a mobile asset ceases to be chargeable in relation to a person by virtue of ceasing to be dedicated to an oil field in which he, or a person connected with him, is or has been a participator, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when it ceased to be so dedicated, and

(b) immediately to have reacquired it,

at its market value at that time.

(2) Where a person who is not resident and not ordinarily resident in the United Kingdom ceases to carry on a trade in the United Kingdom through a branch or agency, he shall be deemed for all purposes of this Act—

(a) to have disposed immediately before the time when he ceased to carry on the trade in the United Kingdom through a branch or agency of every asset to which subsection (3) below applies, and

(b) immediately to have reacquired every such asset,

at its market value at that time.

(3) This subsection applies to any exploration or exploitation asset, other than a mobile asset, used in or for the purposes of the trade at or before the time of the deemed disposal.

(4) A person shall not be deemed by subsection (2) above to have disposed of an asset if, immediately after the time when he ceases to carry on the trade in the United Kingdom through a branch or agency, the asset is used in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area.

(5) Where in a case to which subsection (4) above applies the person ceases to use the asset in or for the purposes of exploration or exploitation activities carried on by him in the United Kingdom or a designated area, he shall be deemed for all purposes of this Act—

(a) to have disposed of the asset immediately before the time when he ceased to use it in or for the purposes of such activities, and

(b) immediately to have reacquired it,

at its market value at that time.

(6) For the purposes of this section an asset is at any time a chargeable asset in relation to a person if, were it to be disposed of at that time, any chargeable gains accruing to him on the disposal—

(a) would be gains in respect of which he would be chargeable to capital gains tax under section 10(1), or

(b) would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3).

(7) In this section—

(a) "exploration or exploitation asset" means an asset used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area;

(b) "designated area" and "exploration or exploitation activities" have the same meanings as in section 276; and

(c) the expressions "dedicated to an oil field" and "participator" shall be construed as if this section were included in Part I of the [M64]Oil Taxation Act 1975.

Marginal Citations

M64 1975 c. 22.

[F313]200 Limitation of losses on disposal of oil industry assets held on 31st March 1982.

. . . . . .

Textual Amendments

F313 S. 200 repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(7), **Sch. 26 Pt. V(8)** (with Sch. 12)

Mineral leases

201 Royalties.

(1) A person resident or ordinarily resident in the United Kingdom who in any chargeable period is entitled to receive any mineral royalties under a mineral lease or agreement shall be treated for the purposes of this Act as if there accrued to him in that period a chargeable gain equal to one-half of the total of the mineral royalties receivable by him under that lease or agreement in that period.

(2) This section shall have effect notwithstanding any provision of section 119(1) of the Taxes Act making the whole of certain kinds of mineral royalties chargeable to tax under Schedule D, [F314]... .

(3) The amount of the chargeable gain treated as accruing to any person by virtue of subsection (1) above shall, notwithstanding any other provision of this Act, be the whole amount calculated in accordance with that subsection, and, accordingly, no reduction shall be made on account of expenditure incurred by that person or of any other matter whatsoever.

(4) In any case where, before the commencement of section 122 of the Taxes Act, for the purposes of the 1979 Act or corporation tax on chargeable gains a person was treated as if there had accrued to him in any chargeable period ending before 6th April 1988 a chargeable gain equal to the relevant fraction, determined in accordance with section 29(3)(b) of the [M65]Finance Act 1970, of the total of the mineral royalties receivable by him under that lease or agreement in that period, subsection (1) above shall have effect in relation to any mineral royalties receivable by him under that lease or agreement in any later chargeable period with the substitution for the reference to one-half of a reference to the relevant fraction as so determined.

Textual Amendments

F314 Words in s. 201(2) repealed (1.5.1995) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(22)**

Marginal Citations

M65 1970 c.24.

202 Capital losses.

(1) This section has effect in relation to capital losses which accrue during the currency of a mineral lease or agreement, and applies in any case where, at the time of the occurrence of a relevant event in relation to a mineral lease or agreement, the person who immediately before that event occurred was entitled to receive mineral royalties

under the lease or agreement ("the taxpayer") has an interest in the land to which the mineral lease or agreement relates ("the relevant interest").

(2) For the purposes of this section, a relevant event occurs in relation to a mineral lease or agreement—

(a) on the expiry or termination of the mineral lease or agreement;

(b) if the relevant interest is disposed of, or is treated as having been disposed of by virtue of any provision of this Act.

(3) On the expiry or termination of a mineral lease or agreement the taxpayer shall, if he makes a claim in that behalf, be treated for purposes of tax in respect of chargeable gains as if he had disposed of and immediately reacquired the relevant interest for a consideration equal to its market value, but a claim may not be made under this subsection—

(a) if the expiry or termination of the mineral lease or agreement is also a relevant event falling within subsection (2)(b) above; nor

(b) unless, on the notional disposal referred to above, an allowable loss would accrue to the taxpayer.

(4) In this section "the terminal loss", in relation to a relevant event in respect of which a claim is made under subsection (3) above, means the allowable loss which accrues to the taxpayer by virtue of the notional disposal occurring on that relevant event by virtue of that subsection.

(5) On making a claim under subsection (3) above, the taxpayer shall specify whether he requires the terminal loss to be dealt with in accordance with subsection (6) or subsections (9) to (11) below.

(6) Where the taxpayer requires the loss to be dealt with in accordance with this subsection it shall be treated as an allowable loss accruing to him in the chargeable period in which the mineral lease or agreement expires.

(7) If on the occurrence of a relevant event falling within subsection (2)(b) above, an allowable loss accrues to the taxpayer on the disposal or notional disposal which constitutes that relevant event, the taxpayer may make a claim under this subsection requiring the loss to be dealt with in accordance with subsections (9) to (11) below and not in any other way.

(8) In subsections (9) to (11) below "the terminal loss" in relation to a relevant event in respect of which a claim is made under subsection (7) above means the allowable loss which accrues to the taxpayer as mentioned in that subsection.

(9) Where, as a result of a claim under subsection (3) or (7) above, the terminal loss is to be dealt with in accordance with this subsection, then, subject to subsection (10) below, it shall be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for chargeable periods preceding that in which the relevant event giving rise to the terminal loss occurred and falling wholly or partly within the period of 15 years ending with the date of that event.

(10) The amount of the terminal loss which, by virtue of subsection (9) above, is to be deducted from or set off against the amount on which the taxpayer was chargeable to capital gains tax, or as the case may be corporation tax, for any chargeable period shall not exceed the amount of the gain which in that period was treated, by virtue of section 201(1), as accruing to the taxpayer in respect of mineral royalties under the

mineral lease or agreement in question; and subject to this limit any relief given to the taxpayer by virtue of subsection (9) above shall be given as far as possible for a later rather than an earlier chargeable period.

(11) If in any case where relief has been given to the taxpayer in accordance with subsections (9) and (10) above there remains an unexpended balance of the terminal loss which cannot be applied in accordance with those subsections, there shall be treated as accruing to the taxpayer in the chargeable period in which the relevant event occurs an allowable loss equal to that unexpended balance.

203 Provisions supplementary to sections 201 and 202.

(1) Subsections (5) to (7) of section 122 of the Taxes Act (meaning of "minerals" etc.) shall apply for the interpretation of this section and sections 201 and 202 as they apply for the interpretation of that section.

(2) No claim under section 202(3) or (7) shall be allowed unless it is made within 6 years from the date of the relevant event by virtue of which the taxpayer is entitled to make the claim.

(3) All such repayments of tax shall be made as may be necessary to give effect to any such claim.

CHAPTER III

INSURANCE

204 Policies of insurance.

(1) The rights of the insurer under any policy of insurance shall not constitute an asset on the disposal of which a gain may accrue, whether the risks insured relate to property or not; and the rights of the insured under any policy of insurance of the risk of any kind of damage to, or the loss or depreciation of, assets shall constitute an asset on the disposal of which a gain may accrue only to the extent that those rights relate to assets on the disposal of which a gain may accrue or might have accrued.

(2) Notwithstanding subsection (1) above, sums received under a policy of insurance of the risk of any kind of damage to, or the loss or depreciation of, assets are for the purposes of this Act, and in particular for the purposes of section 22, sums derived from the assets.

(3) Where any investments or other assets are or have been, in accordance with a policy issued in the course of life assurance business carried on by an insurance company, transferred to the policy holder on or after 6th April 1967, the policy holder's acquisition of the assets and the disposal of them to him shall be deemed to be, for the purposes of this Act, for a consideration equal to the market value of the assets.

(4) In subsections (1) and (2) above "policy of insurance" does not include a policy of assurance on human life and in subsection (3) "life assurance business" and "insurance company" have the same meaning as in Chapter I of Part XII of the Taxes Act.

205 Disallowance of insurance premiums as expenses.

Without prejudice to the provisions of section 39, there shall be excluded from the sums allowable as a deduction in the computation of the gain accruing on the disposal of an asset any premiums or other payments made under a policy of insurance of the risk of any kind of damage or injury to, or loss or depreciation of, the asset.

F315 206 . . . . . .

Textual Amendments

F315 S. 206 repealed (27.7.1993, the repeal of subsections (2)-(5) having effect for the year 1994-95 and subsequent years of assessment, the repeal of subsection (1) having effect for the year 1992-93 and subsequent years of assessment, as mentioned in Notes 4, 5) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(12) Notes 4, 5; S. 206 further amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment) by 1993 c. 34, **ss. 183(7)**, 184(3)

F316 207 . . . . . .

Textual Amendments

F316 S. 207 repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years as mentioned in Note 2) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(12) Note 2

F317 208 . . . . . .

Textual Amendments

F317 S. 208 repealed (27.7.1993 with effect for the year 1994 and subsequent underwriting years as mentioned in Sch. 23, Pt. III Table (12) Note 2) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(12) Note 2

F318 209 . . . . . .

Textual Amendments

F318 S. 209 repealed (27.7.1993, the repeal of subsections (1)(2)(6) having effect for the year 1994-95 and subsequent years of assessment, the repeal of subsections (3)-(5) having effect for the year 1992-3 and subsequent years of assessment, as mentioned in Notes 4, 5) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(12) Notes 4, 5; s. 209 further amended (27.7.1993 with effect for the year 1992-93 and subsequent years of assessment as mentioned in s. 184(3)) by 1993 c. 34, **ss. 183(8)(a)(b)**, 184(3)

210 Life assurance and deferred annuities.

(1) This section has effect as respects any policy of assurance or contract for a deferred annuity on the life of any person.

(2) No chargeable gain shall accrue on the disposal of, or of an interest in, the rights under any such policy of assurance or contract except where the person making the disposal is not the original beneficial owner and acquired the rights or interest for a consideration in money or money's worth.

(3) Subject to subsection (2) above, the occasion of—

(a) the payment of the sum or sums assured by a policy of assurance, or

(b) the transfer of investments or other assets to the owner of a policy of assurance in accordance with the policy,

and the occasion of the surrender of a policy of assurance, shall be the occasion of a disposal of the rights under the policy of assurance.

(4) Subject to subsection (2) above, the occasion of the payment of the first instalment of a deferred annuity, and the occasion of the surrender of the rights under a contract for a deferred annuity, shall be the occasion of a disposal of the rights under the contract for a deferred annuity and the amount of the consideration for the disposal of a contract for a deferred annuity shall be the market value at that time of the right to that and further instalments of the annuity.

211 Transfers of business.

(1) This section applies where there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under **[**F319Part I of Schedule 2C to the Insurance Companies Act 1982**]**.

(2) Subject to subsection (3) below, where this section applies section 139 shall not be prevented from having effect in relation to any asset included in the transfer by reason that—

(a) the transfer is not part of a scheme of reconstruction or amalgamation,

(b) the condition in paragraph **[**F320(b)**]** of subsection (1) of that section is not satisfied, or

(c) the asset is within subsection (2) of that section;

and where section 139 applies by virtue of paragraph (a) above the references in subsection (5) of that section to the reconstruction or amalgamation shall be construed as references to the transfer.

(3) Section 139 shall not have effect in relation to an asset by virtue of subsection (2) above unless—

(a) any gain accruing to the transferor—

(i) on the disposal of the asset in accordance with the scheme, or

(ii) where that disposal occurs after the transfer of business has taken place, on a disposal of the asset immediately before that transfer, and

(b) any gain accruing to the transferee on a disposal of the asset immediately after its acquisition in accordance with the scheme,

would be a chargeable gain which would form part of its profits for corporation tax purposes F321... .

Textual Amendments

F319 Words in s. 211(1) substituted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 1(1)(2)(d)**

F320 Words in s. 211(2)(b) substituted (27.7.1993 with application as mentioned in s. 90(2)) by 1993 c. 34, **s. 90(1)(2)**

F321 Words in s. 211(3) repealed (with effect in accordance with s. 251(1)(a)(11) of the amending Act) by Finance Act 1994 (c. 9), s. 251(11), **Sch. 26 Pt. VIII(1)**

Modifications etc. (not altering text)

C150 S. 211(1) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), regs. 1, **4(1)**(2)(e)

C151 S. 211(1) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **44(1)**(2)

212 Annual deemed disposal of holdings of unit trusts etc.

(1) Where at the end of an accounting period the assets of an insurance company's long term business fund include—

(a) rights under an authorised unit trust, or

(b) relevant interests in an offshore fund,

then, subject to the following provisions of this section and to section 213, the company shall be deemed for the purposes of corporation tax on capital gains to have disposed of and immediately reacquired each of the assets concerned at its market value at that time.

(2) Subsection (1) above shall not apply to assets linked solely to pension business**[**F322, individual savings account business**]****[**F323or life reinsurance business**]** or to assets of the overseas life assurance fund, F324. . .

[F325(2A) Subsection (1) above shall not apply to assets falling by virtue of paragraph 4 of Schedule 10 to the Finance Act 1996 (company holdings in unit trusts) to be treated for the accounting period in question as representing rights under a creditor relationship of the company.**]**

F326(3) . . . . . .

F326(4) . . . . . .

(5) For the purposes of this section an interest is a "relevant interest in an offshore fund" if—

(a) it is a material interest in an offshore fund for the purposes of Chapter V of Part XVII of the Taxes Act, or

[F327(b) it would be such an interest if either or both of the assumptions mentioned in subsection (6A) below were made.**]**

F326(6) . . . . . .

[F328(6A) The assumptions referred to in subsection (5)(b) above are—

(a) that the companies, unit trust schemes and arrangements referred to in paragraphs (a) to (c) of subsection (1) of section 759 of the Taxes Act are not limited to those which are also collective investment schemes;

(b) that the shares and interests excluded by subsections (6) and (8) of that section are limited to shares or interests in trading companies.**]**

(7) In this section "trading company" means a company—

(a) whose business consists of the carrying on of insurance business, or the carrying on of any other trade which does not consist to any extent of dealing in commodities, currency, securities, debts or other assets of a financial nature, or

(b) whose business consists wholly or mainly of the holding of shares or securities of trading companies which are its 90 per cent. subsidiaries;

and in this section and sections 213 **[**F329to 214A**]** other expressions have the same meanings as in Chapter I of Part XII of the Taxes Act.

[F330(7A) In a case where the profits of a company's life assurance business are charged to tax in accordance with Case I of Schedule D subsection (1) above has effect subject to section 440B(5) of the Taxes Act.**]**

F331(8) . . . . . .

Textual Amendments

F322 Words in s. 212(2) inserted (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), regs. 1, **23**

F323 Words in s. 212(2) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 9(2)** (with Sch. 8 para. 55(2))

F324 Words in s. 212(2) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, ss. 91(2)(b), 213, **Sch. 23 Pt. III** Table(8) Note

F325 S. 212(2A) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 63** (with Sch. 15)

F326 S. 212(3)(4)(6) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, ss. 91(2)(b), 213, **Sch. 23 Pt. III** Table(8) Note

F327 S. 212(5)(b) substituted (with effect in accordance with s. 134(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 134(6)**

F328 S. 212(6A) inserted (with effect in accordance with s. 134(10) of the amending Act) by Finance Act 1995 (c. 4), **s. 134(7)**

F329 Words in s. 212(7) substituted (27.7.1993) by 1993 c. 37, **s. 91(3)**

F330 S. 212(7A) inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(5)** (with Sch. 8 para. 55(2))

F331 S. 212(8) repealed (27.7.1993 with effect as mentioned in s. 91(1)) by 1993 c. 34, ss. 91(1), 213, **Sch. 23 Pt. III** Table(8) Note

Modifications etc. (not altering text)

C152 S. 212 modified (31.7.1992) by S.I. 1992/1655, **arts. 1**, 21
S. 212 amended (27.7.1993) by 1993 c. 34, **s. 91(1)**
S. 212 excluded (27.7.1993) by 1993 c. 34, **s. 91(1)**

C153 S. 212 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), reg. 21 (as substituted (10.8.1995) by S.I. 1995/1916, regs. 1, **11**)

C154 S. 212 modified (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 para. 15(2)**

C155 S. 212 modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **45**

C156 S. 212(1) excluded by 1988 c. 1, s. 440B(5) (as inserted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 28(1)** (with Sch. 8 para. 55(2)))

213 Spreading of gains and losses under section 212.

(1) Any chargeable gains or allowable losses which would otherwise accrue on disposals deemed by virtue of section 212 to have been made at the end of a company's accounting period shall be treated as not accruing to it, but instead—

(a) there shall be ascertained the difference ("the net amount") between the aggregate of those gains and the aggregate of those losses, and

(b) one-seventh of the net amount shall be treated as a chargeable gain or, where it represents an excess of losses over gains, as an allowable loss accruing to the company at the end of the accounting period, and

(c) a further one-seventh shall be treated as a chargeable gain or, as the case may be, as an allowable loss accruing at the end of each succeeding accounting period until the whole amount has been accounted for.

[F332(1A) Subsection (1) above shall not apply to chargeable gains or allowable losses except so far as they are gains or losses which—

(a) are referable to basic life assurance and general annuity business; or

(b) would (apart from that subsection) be taken into account in computing the profits of any business treated as a separate business under section 458 of the Taxes Act;

and that subsection shall apply separately in relation to the gains and losses falling within paragraph (a) above and those falling within paragraph (b) above for the purpose of determining what chargeable gains or allowable losses so referable are to be treated as accruing under that subsection and what chargeable gains or allowable losses to be so taken into account are to be treated as so accruing.**]**

(2) For any accounting period of less than one year, the fraction of one-seventh referred to in subsection (1)(c) above shall be proportionately reduced; and where this subsection has had effect in relation to any accounting period before the last for which subsection (1)(c) above applies, the fraction treated as accruing at the end of that last accounting period shall also be adjusted appropriately.

(3) **[**F333Subject to subsection (3A) below,**]** Where—

(a) the net amount for an accounting period of an insurance company represents an excess of gains over losses,

(b) the net amount for one of the next 6 accounting periods (after taking account of any reductions made by virtue of this subsection) represents an excess of losses over gains,

(c) there is (after taking account of any such reductions) no net amount for any intervening accounting period,

[F334(ca) none of the intervening accounting periods is an accounting period in which the company joined a group of companies, and**]**

(d) within 2 years after the end of the later accounting period the company makes a claim for the purpose in respect of the whole or part of the net amount for that period,

the net amounts for both the earlier and the later period shall be reduced by the amount in respect of which the claim is made.

[F335(3A) Subsection (3) above shall have effect where the company in question joins a group of companies in the later period as if a claim could not be made in respect of the net amount for that period except to the extent (if any) that the net amount is an amount which, assuming there to be gains accruing to the company immediately after the beginning of that period, would fall to be treated under paragraph 4 of Schedule 7AA as a qualifying loss in relation to those gains.

(3B) References in subsections (3) and (3A) above to a company joining a group of companies shall be construed in accordance with paragraph 1 of Schedule 7AA as if those references were contained in that Schedule.**]**

(4) Subject to subsection (5) below, where a company ceases to carry on long term business before the end of the last of the accounting periods for which subsection (1)(c) above would apply in relation to a net amount, the fraction of that amount that is treated as accruing at the end of the accounting period ending with the cessation shall be such as to secure that the whole of the net amount has been accounted for.

(5) **[**F336Subject to subsections (5A) to (7) below**]** Where there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under **[**F337Part I of Schedule 2C to the Insurance Companies Act 1982**]**, any chargeable gain or allowable loss which (assuming that the transferor had continued to carry on the business transferred) would have accrued to the transferor by virtue of subsection (1) above after the transfer shall instead be deemed to accrue to the transferee.

[F338(5A) Subsection (5) above shall not apply where the transferee is resident outside the United Kingdom unless the business to which the transfer relates is carried on by the transferee, for a period beginning with the time when the transfer takes effect, through a branch or agency in the United Kingdom.**]**

(6) Where subsection (5) above has effect, the amount of the gain or loss accruing at the end of the first accounting period of the transferee ending after the day when the transfer takes place shall be calculated as if that accounting period began with the day after the transfer.

(7) Where the transfer is of part only of the transferor's long term business, subsection (5) above shall apply only to such part of any amount to which it would otherwise apply as is appropriate.

(8) Any question arising as to the operation of subsection (7) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

F339(9) . . . . . .

Textual Amendments

F332 S. 213(1A) inserted (27.7.1993) by 1993 c. 37, **s. 91(4)**

F333 Words in s. 213(3) inserted (with effect in accordance with s. 137(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 137(3)(a)**

F334 S. 213(3)(ca) substituted for word at end of s. 213(3)(c) (with effect in accordance with s. 137(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 137(3)(b)**

F335 S. 213(3A)(3B) inserted (with effect in accordance with s. 137(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 137(4)**

F336 Words in s. 213(5) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 4**

F337 Words in s. 213(5) substituted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 1(1)(2)(d)**

F338 S. 213(5A) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 4**

F339 S. 213(9) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 34, s. 213, **Sch. 23 Pt. III** Table(8) Note

Modifications etc. (not altering text)

C157 S. 213 modified (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), s. 105, **Sch. 15 para. 15(2)**

C158 S. 213(1A) modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), reg. 21A (as inserted (10.8.1995) by S.I. 1995/1916, regs. 1, **12**)

C159 S. 213(1A) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **46**

C160 S. 213 modified (with effect in accordance with reg. 1 of the amending S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), regs. 1, **11(2)**

C161 S. 213(5) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), regs. 1, **4(1)**(2)(e)

C162 S. 213(5) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **47**

214 Transitional provisions.

(1) In this section—

(a) "section 212 assets" means rights under authorised unit trusts and relevant interests in offshore funds which are assets of a company's long term business fund;

(b) "linked section 212 assets" means section 212 assets which are linked assets;

(c) "relevant linked liabilities", in relation to a company, means such of the liabilities of its basic life assurance and general annuity business as are liabilities in respect of benefits under pre-commencement policies or contracts, being benefits to be determined by reference to the value of linked assets;

(d) "pre-commencement policies or contracts" means—

(i) policies issued in respect of insurances made before 1st April 1990, and

(ii) annuity contracts made before that date,

but excluding policies or annuity contracts varied on or after that date so as to increase the benefits secured or to extend the term of the insurance or annuity (any exercise of rights conferred by a policy or annuity contract being regarded for this purpose as a variation);

(e) "basic life assurance and general annuity business" means life assurance business, other than pension business and overseas life assurance business.

(2) The assets which are to be regarded for the purposes of this section as linked solely to an insurance company's basic life assurance and general annuity business at any time before the first accounting period of the company which begins on or after 1st January 1992 are all the assets which at that time—

(a) are or were linked solely to the company's basic life assurance business or general annuity business, or

(b) although not falling within paragraph (a) above, would be, or would have been, regarded as linked solely to the company's basic life assurance business, were its general annuity business treated as forming, or having at all times formed, part of its basic life assurance business and as not being a separate category of business.

F340(3) . . . . . .

F340(4) . . . . . .

F340(5) . . . . . .

(6) Subject to subsection (7) below, subsection (9) below applies where—

(a) after the end of 1989 **[**F341and before the time when it is first deemed under section 212 to have made a disposal of any assets**]** an insurance company exchanges section 212 assets ("the old assets") for other assets ("the new assets") to be held as assets of the long term business fund,

(b) the new assets are not section 212 assets but are assets on the disposal of which any gains accruing would be chargeable gains,

(c) both the old assets and the new assets are linked solely to basic life assurance and general annuity business, or both are neither linked solely to basic life assurance and general annuity business or pension business nor assets of the overseas life assurance fund, and

(d) the company makes a claim for the purpose within 2 years after the end of the accounting period in which the exchange occurs.

(7) Subsection (6) above shall have effect in relation to old assets only to the extent that their amount, when added to the amount of any assets to which subsection (9) below has already applied and which are assets of the same class, does not exceed the aggregate of—

(a) the amount of the assets of the same class included in the long term business fund at the beginning of 1990, other than assets linked solely to pension business and assets of the overseas life assurance fund, and

(b) 110 per cent. of the amount of the assets of that class which represents any subsequent increases in the company's relevant linked liabilities in respect of benefits to be determined by reference to the value of assets of that class.

(8) The reference in subsection (7)(b) above to a subsequent increase in liabilities is a reference to any amount by which the liabilities at the end of an accounting period ending after 31st December 1989 exceed those at the beginning of the period (or at the end of 1989 if that is later); and for the purposes of that provision the amount of assets which represents an increase in liabilities is the excess of—

(a) the amount of assets whose value at the later time is equivalent to the liabilities at that time, over

(b) the amount of assets whose value at the earlier time is equivalent to the liabilities at that time.

(9) Where this subsection applies, the insurance company (but not any other party to the exchange) shall be treated for the purposes of corporation tax on capital gains as if the exchange had not involved a disposal of the old assets or an acquisition of the new,

but as if the old and the new assets were the same assets acquired as the old assets were acquired.

(10) References in subsections (6) to (9) above to the exchange of assets include references to the case where the consideration obtained for the disposal of assets (otherwise than by way of an exchange within subsection (6)) is applied in acquiring other assets within 6 months after the disposal; and for the purposes of those subsections the time when an exchange occurs shall be taken to be the time when the old assets are disposed of.

(11) Where at any time after the end of 1989 there is a transfer of long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under **[**F342Part I of Schedule 2C to the Insurance Companies Act 1982**]**—

(a) if the transfer is of the whole of the long term business of the transferor, subsections (1) to (10) above shall have effect in relation to the assets of the transferee as if that business had at all material times been carried on by him;

(b) if the transfer is of part of the long term business of the transferor, those subsections shall have effect in relation to assets of the transferor and the transferee to such extent as is appropriate;

and any question arising as to the operation of paragraph (b) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and the transferee shall be entitled to appear and be heard or to make representations in writing.

Textual Amendments

F340 S. 214(3)-(5) repealed (27.7.1993 with effect in relation to accounting periods beginning on or after 1.1.1993) by 1993 c. 37, ss. 91(5), 213, **Sch. 23 Pt. III** Table(8) Note

F341 Words in s. 214(6)(a) inserted (27.7.1993) by 1993 c. 34, **s. 91(6)**

F342 Words in s. 214(11) substituted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 1(1)(2)(d)**

Modifications etc. (not altering text)

C163 S. 214 modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), reg. 21B (as inserted (10.8.1995) by S.I. 1995/1916, regs. 1, **12**)

C164 S. 214(1) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **48**

C165 S. 214 modified (with effect in accordance with reg. 1 of the amending S.I.) by The Insurance Companies (Capital Redemption Business) (Modification of the Corporation Tax Acts) Regulations 1999 (S.I. 1999/498), regs. 1, **12(2)**

C166 S. 214(11) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), regs. 1, **4(1)**(2)(e)

[F343**214A Further transitional provisions.**

(1) This section applies where within two years after the end of an accounting period beginning on or after 1st January 1993 ("the relevant period")—

(a) an insurance company makes a claim for the purposes of this section in relation to that period; and

(b) that period is one of the company's first eight accounting periods after the end of 1992.

(2) Where this section applies, section 213 shall have effect as if—

(a) the amount of the chargeable gains which—

(i) apart from that section and this section, would be treated as accruing on disposals deemed by virtue of section 212 to have been made at the end of the relevant period, and

(ii) satisfy the condition specified in paragraph (a) of section 213(1A),

were reduced by the protected proportion of that amount; and

(b) an amount equal to the appropriate part of that reduction were (subject to section 213) a chargeable gain satisfying that condition and accruing at the end of each of the accounting periods in which the reduction is to be taken into account.

(3) For the purposes of subsection (2) above the protected proportion, in relation to the relevant period, of the amount mentioned in paragraph (a) of that subsection shall be an amount equal to the amount calculated in accordance with the following formula—

$$(A+B\times CD)\times EF\times G8$$

(4) In subsection (3) above—

A is so much of the amount mentioned in subsection (2)(a) above as represents chargeable gains on section 212 assets which at the end of the relevant period were linked solely to the basic life assurance and general annuity business of the company in question;

B is so much of the amount so mentioned as represents chargeable gains on linked section 212 assets which at the end of that period were partially linked to that business;

C is the amount of such of the closing liabilities at the end of that period of the company's basic life assurance and general annuity business as were liabilities in respect of benefits to be determined by reference to the value of linked section 212 assets which were then partially linked to that business;

D is the amount of all the closing liabilities of the company at the end of that period which were long term business liabilities in respect of benefits to be so determined;

E is the amount of such of the closing liabilities of the company on the relevant date as were relevant linked liabilities in respect of benefits determined by reference to linked section 212 assets;

F is the amount of all the closing liabilities on the relevant date of the company's basic life assurance and general annuity business which were liabilities in respect of such benefits; and

G is the number of accounting periods in the first nine accounting periods of the company after the end of 1992 which remain after the end of the relevant period or, as the case may be, which would so remain apart from any cessation of the carrying on of any business of the company;

and for the purposes of this subsection the relevant date is, subject to subsection (7) below, the time of the first disposal which is deemed to have been made by the company in question under section 212.

(5) For the purposes of this section and subject to subsection (6) below—

(a) a reduction made under subsection (2) above in relation to the accounting period of any company shall be taken into account in every succeeding

accounting period of that company which is included in the first nine accounting periods of that company after the end of 1992; and

(b) in relation to any accounting period in which a reduction is to be taken into account, the appropriate part of the reduction is—

(i) if that is the only accounting period in which it falls to be taken into account, the whole of the reduction; and

(ii) in any other case, the amount of the reduction divided by the number of the accounting periods after the period in which the reduction is made in which the reduction falls to be taken into account or, as the case may be, would so fall apart from any cessation of the carrying on of any business of the company.

(6) Subject to subsection (7) below, where a company ceases to carry on long term business before the end of the first nine accounting periods after the end of 1992, the appropriate part of any reduction in relation to the accounting period ending with the cessation shall be such as to secure that the whole of the reduction has been taken into account under subsection (2)(b) above.

(7) **[**F344Subject to subsections (7A) and (8) below**]** Where at any time on or after 1st January 1993 there is a transfer of the whole or part of the long term business of an insurance company ("the transferor") to another company ("the transferee") in accordance with a scheme sanctioned by a court under **[**F345Part I of Schedule 2C to the Insurance Companies Act 1982**]**, this section shall have effect so that—

(a) the relevant date for the purposes of subsection (4) above shall be determined in relation to any disposal deemed to have been made after the transfer—

(i) by the transferee, or

(ii) in a case where the transfer is of part of the transferor's long term business, by the transferee or the transferor,

as if there had been no deemed disposals under section 212 before the transfer; and

(b) any reduction which (on the assumption that the transferor had continued to carry on the transferred business) would have fallen to be taken into account under subsection (2)(b) above shall be taken into account instead in relation to the transferee.

[F346(7A) Paragraph (b) of subsection (7) above shall not apply where the transferee is resident outside the United Kingdom unless the business to which the transfer relates is carried on by the transferee, for a period beginning with the time when the transfer takes effect, through a branch or agency in the United Kingdom.**]**

(8) Where the transfer is of part only of the transferor's long term business, subsection (7)(b) above shall apply only to such part of any reduction to which it would otherwise apply as is appropriate.

(9) Any question arising as to the operation of subsection (8) above shall be determined by the Special Commissioners who shall determine the question in the same manner as they determine appeals; but both the transferor and transferee shall be entitled to appear and be heard or to make representations in writing.

(10) This section shall have effect in relation to any cases in which there is such a transfer as is mentioned in subsection (7) above as if the accounting periods to be taken into account in any calculation for the purposes of this section of the number of accounting periods of the transferee after the end of 1992, and the only accounting periods in

relation to which any reduction is to be taken into account under paragraph (b) of that subsection, were—

(a) the accounting periods of the transferor which began on or after 1st January 1993 and ended on or before the day of the transfer (including any which, by reference to a transfer in relation to which the transferor is a transferee, are taken into account in accordance with this subsection as accounting periods of the transferor); and

(b) the accounting periods of the transferee ending after the day of the transfer,

and this section shall have effect in relation to such a reduction as if the first accounting period of the transferee to end after the day of the transfer began with the day after the transfer.

(11) For the purposes of this section assets shall be taken to be partially linked to a company's basic life assurance and general annuity business if they are not linked solely to that business and are neither—

(a) linked solely to **[**F347any pension business**[**F348, individual savings account business**]** or life reinsurance business of that company or to**]** long term business of that company other than life assurance business; nor

(b) assets of the company's overseas life assurance fund;

and subsection (1) of section 214 shall apply for the purposes of this section as it applies for the purposes of that section.

(12) Subject to subsection (10) above, the references in this section, in relation to any company, to the first eight accounting periods of a company after the end of 1992 are references to the first accounting period of that company to begin on or after 1st January 1993 and to the succeeding seven accounting periods of that company, and references to the first nine accounting periods of a company after the end of 1992 shall be construed accordingly.**]**

Textual Amendments

F343 S. 214A inserted (27.7.1993) by 1993 c. 34, **s. 91(5)**

F344 Words in s. 214A(7) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 5**

F345 Words in s. 214A(7) substituted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 1(1)(2)(d)**

F346 S. 214A(7A) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 5**

F347 Words in s. 214A(11)(a) substituted (with effect in accordance with Sch. 8 para. 57(1) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 8 para. 9(3)** (with Sch. 8 para. 55(2))

F348 Words in s. 214A(11)(a) inserted (6.4.1999) by The Individual Savings Account (Insurance Companies) Regulations 1998 (S.I. 1998/1871), regs. 1, **23**

Modifications etc. (not altering text)

C167 S. 214A modified by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1992 (S.I. 1992/1655), reg. 21C (as inserted (10.8.1995) by S.I. 1995/1916, regs. 1, **12**)

C168 S. 214A(4) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **49(1)**(2)

C169 S. 214A(7) modified (with effect in accordance with reg. 1 of the amending S.I.) by The Friendly Societies (Taxation of Transfers of Business) Regulations 1995 (S.I. 1995/171), regs. 1, **4(1)**(2)(e)

C170 S. 214A(11) modified (with effect in accordance with reg. 1(2) of the amending S.I.) by The Friendly Societies (Modification of the Corporation Tax Acts) Regulations 1997 (S.I. 1997/473), regs. 1(1), **49(1)**(3)

[214B F349 Modification of Act in relation to overseas life insurance companies.

Schedule 7B (which makes modifications of this Act in relation to overseas life insurance companies) shall have effect.**]**

Textual Amendments

F349 S. 214B inserted (27.7.1993) by 1993 c. 34, **s.102(1)**

CHAPTER IV

MISCELLANEOUS CASES

[F350 Re-organisations of mutual businesses

Textual Amendments

F350 S. 214C and cross-heading inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 7**

214C Gains not eligible for taper relief.

(1) A gain shall not be eligible for taper relief if—

(a) it is a gain accruing on a disposal in connection with any relevant re-organisation; or

(b) it is a gain accruing on anything which, in a case in which capital sums are received under or in connection with a relevant re-organisation, falls under section 22 to be treated as a disposal.

(2) In this section "a relevant re-organisation" means—

(a) any scheme of reconstruction or amalgamation applying to a mutual company;

(b) the transfer of the whole of a building society's business to a company in accordance with section 97 and the other applicable provisions of the Building Societies Act 1986; or

(c) the incorporation of a registered friendly society under the Friendly Societies Act 1992.

(3) In this section—

"insurance company" has the meaning given by section 96(1) of the Insurance Companies Act 1982;

"mutual company" means—

(a) a mutual insurance company; or

(b) a company of another description carrying on a business on a mutual basis;

"mutual insurance company" means an insurance company carrying on a business without having a share capital; and

"scheme of reconstruction or amalgamation" has the same meaning as in section 136.**]**

Building societies etc.

215 Disposal of assets on amalgamation of building societies etc.

If, in the course of or as part of an amalgamation of 2 or more building societies or a transfer of engagements from one building society to another, there is a disposal of an asset by one society to another, both shall be treated for the purposes of corporation tax on chargeable gains as if the asset were acquired from the one making the disposal for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

Modifications etc. (not altering text)

C171 Ss. 215, 216 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

216 Assets transferred from society to company.

(1) This section and section 217 apply where there is a transfer of the whole of a building society's business to a company ("the successor company") in accordance with section 97 and the other applicable provisions of the [M66]Building Societies Act 1986.

(2) Where the society and the successor company are not members of the same group at the time of the transfer—

(a) they shall be treated for the purposes of corporation tax on capital gains as if any asset disposed of as part of the transfer were acquired by the successor company for a consideration of such amount as would secure that on the disposal neither a gain nor a loss would accrue to the society, and

(b) if because of the transfer any company ceases to be a member of the same group as the society, that event shall not cause section 178 or 179 to have effect as respects any asset acquired by the company from the society or any other member of the same group.

(3) Where the society and the successor company are members of the same group at the time of the transfer but later cease to be so, that later event shall not cause section 178 or 179 to have effect as respects—

(a) any asset acquired by the successor company on or before the transfer from the society or any other member of the same group, or

(b) any asset acquired from the society or any other member of the same group by any company other than the successor company which is a member of the same group at the time of the transfer.

(4) Subject to subsection (6) below, where a company which is a member of the same group as the society at the time of the transfer—

(a) ceases to be a member of that group and becomes a member of the same group as the successor company, and

(b) subsequently ceases to be a member of that group,

section 178 or 179 shall have effect on that later event as respects any relevant asset acquired by the company otherwise than from the successor company as if it had been acquired from the successor company.

(5) In subsection (4) above "relevant asset" means any asset acquired by the company—

(a) from the society, or

(b) from any other company which is a member of the same group at the time of the transfer,

when the company and the society, or the company, the society and the other company, were members of the same group.

(6) Subsection (4) above shall not apply if the company which acquired the asset and the company from which it was acquired (one being a 75 per cent. subsidiary of the other) cease simultaneously to be members of the same group as the successor company but continue to be members of the same group as one another.

(7) For the purposes of this section "group" shall be construed in accordance with section 170.

Modifications etc. (not altering text)

C171 Ss. 215, 216 restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

Marginal Citations

M66 1986 c. 53.

217 Shares, and rights to shares, in successor company.

(1) Where, in connection with the transfer, there are conferred on members of the society—

(a) any rights to acquire shares in the successor company in priority to other persons, or

(b) any rights to acquire shares in that company for consideration of an amount or value lower than the market value of the shares, or

(c) any rights to free shares in that company,

any such right so conferred on a member shall be regarded for the purposes of tax on chargeable gains as an option (within the meaning of section 144) granted to, and acquired by, him for no consideration and having no value at the time of that grant and acquisition.

(2) Where, in connection with the transfer, shares in the successor company are issued by that company, or disposed of by the society, to a member of the society, those shares shall be regarded for the purposes of tax on chargeable gains—

(a) as acquired by the member for a consideration of an amount or value equal to the amount or value of any new consideration given by him for the shares (or, if no new consideration is given, as acquired for no consideration); and

(b) as having, at the time of their acquisition by the member, a value equal to the amount or value of the new consideration so given (or, if no new consideration is given, as having no value);

but this subsection is without prejudice to the operation of subsection (1) above, where applicable.

(3) Subsection (4) below applies in any case where—

(a) in connection with the transfer, shares in the successor company are issued by that company, or disposed of by the society, to trustees on terms which provide for the transfer of those shares to members of the society for no new consideration; and

(b) the circumstances are such that in the hands of the trustees the shares constitute settled property.

(4) Where this subsection applies, then, for the purposes of tax on chargeable gains—

(a) the shares shall be regarded as acquired by the trustees for no consideration;

(b) the interest of any member in the settled property constituted by the shares shall be regarded as acquired by him for no consideration and as having no value at the time of its acquisition;

(c) where a member becomes absolutely entitled as against the trustees to any of the settled property, both the trustees and the member shall be treated as if, on his becoming so entitled, the shares in question had been disposed of and immediately reacquired by the trustees, in their capacity as trustees within section 60(1), for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the trustees (and accordingly section 71 shall not apply in relation to that occasion); and

(d) on the disposal by a member of an interest in the settled property, other than the disposal treated as occurring for the purposes of paragraph (c) above, any gain accruing shall be a chargeable gain (and accordingly section 76(1) shall not apply in relation to the disposal).

(5) Where, in connection with the transfer, the society disposes of any shares in the successor company, then, for the purposes of this Act, any gains arising on the disposal shall not be chargeable gains.

(6) In this section—

"free shares", in relation to a member of the society, means any shares issued by the successor company, or disposed of by the society, to that member in connection with the transfer but for no new consideration;

"member", in relation to the society, means a person who is or has been a member of it, in that capacity, and any reference to a member includes a reference to a member of any particular class or description;

"new consideration" means consideration other than—

(a) consideration provided directly or indirectly out of the assets of the society; or

(b) consideration derived from a member's shares or other rights in the society.

(7) References in this section to the case where a member becomes absolutely entitled to settled property as against the trustees shall be taken to include references to the case where he would become so entitled but for being an infant or otherwise under disability.

[F351 *Friendly societies*]

Textual Amendments

F351 Cross heading inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art. 2**

[F352 217A Transfer of assets on incorporation of registered friendly society.

(1) This section and section 217B apply where a registered friendly society is incorporated under the Friendly Societies Act 1992 ("the 1992 Act").

(2) In this section and section 217B—

(a) "the registered society" means the society before the incorporation, and

(b) "the incorporated society" means the society after the incorporation.

(3) For the purposes of corporation tax on chargeable gains—

(a) any asset of the registered society that by virtue of section 6(2) or (3) of the 1992 Act is transferred to the incorporated society,

(b) any asset of a branch of the registered society that by virtue of section 6(4) of the 1992 Act is transferred to the incorporated society, and

(c) any asset of a branch of the registered society that is identified in a scheme under section 6(5) of the 1992 Act,

shall be taken to be disposed of by the registered society or branch and acquired by the incorporated society on the incorporation for a consideration of such amount as to secure that on the disposal neither a gain nor a loss accrues to the registered society or branch.]

Textual Amendments

F352 S. 217A inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

Modifications etc. (not altering text)

C172 S. 217A restricted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1995 (c. 4), **s. 131(1)**(2)(a)

[F353 217B Rights of members in registered society equated with rights in incorporated society.

(1) In this section, "change of membership" means a change effected by Schedule 4 to the 1992 Act whereby a member of the registered society or of a branch of the registered society becomes a member of the incorporated society or of a branch of the incorporated society.

(2) For the purposes of this Act, a change of membership shall not be taken to involve any disposal or acquisition of an asset by the member concerned, but all the interests and rights in the incorporated society or a branch of the incorporated society that he has immediately after the change, taken together, shall be treated as a single asset which—

(a) was acquired by the first relevant acquisition, and

(b) was added to by any subsequent relevant acquisitions.

(3) In subsection (2) above, "relevant acquisition" means an acquisition by which the member acquired any interest or right in the registered society or a branch of the registered society that he had immediately before the change of membership.**]**

Textual Amendments

F353 S. 217B inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

[F354217C Subsequent disposal of assets by incorporated society etc.

(1) Where any asset acquired on a disposal to which section 217A(3) applies is subsequently disposed of by the incorporated society, section 41 shall apply as if any capital allowance made to the registered society in respect of the asset had been made to the incorporated society.

(2) If the disposal by the incorporated society is in relevant circumstances for the purposes of section 174(1), the disposal to which section 217A(3) applies shall for those purposes be taken to have been a previous transfer of the asset in relevant circumstances.**]**

Textual Amendments

F354 S. 217C inserted (19.2.1993) by 1992 c. 48, s. 56, **Sch. 9 para. 21(3)**; S.I. 1993/236, **art.2**

*The Housing Corporation, **[**F355the Secretary of State**]** and housing associations*

Textual Amendments

F355 Words in s. 218 cross-heading substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140, 158(1), **Sch. 16 para. 80**; S.I. 1998/2244, art. 5

218 Disposals of land between the Housing Corporation, [F356the Secretary of State] or Scottish Homes and housing associations.

(1) Where—

(a) in accordance with a scheme approved under section 5 of the M67Housing Act 1964 or paragraph 5 of Schedule 7 to the M68Housing Associations Act 1985, the Housing Corporation acquires from a housing association the association's interest in all the land held by the association for carrying out its objects, or

(b) after the Housing Corporation has so acquired from a housing association all the land so held by it the Corporation disposes to a single housing association of the whole of that land (except any part previously disposed of or agreed to be disposed of otherwise than to a housing association), together with all related assets,

then both parties to the disposal of the land to or, as the case may be, by the Housing Corporation shall be treated for the purposes of corporation tax in respect of chargeable gains as if the land and any related assets disposed of therewith (and each part of that land and those assets) were acquired from the party making the disposal for a

consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that party.

(2) In subsection (1) above, "housing association" has the same meaning as in the [M69]Housing Associations Act 1985, and "related assets" means, in relation to an acquisition of land by the Housing Corporation, assets acquired by the Corporation in accordance with the same scheme as that land, and in relation to a disposal of land by the Housing Corporation, assets held by the Corporation for the purposes of the same scheme as that land.

(3) This section shall also have effect with the substitution of the words **[**[F357]"the Secretary of State"**]** for the words "the Housing Corporation" and "the Corporation" in each place where they occur.

(4) This section shall also have effect with the substitution of the words " Scottish Homes " for the words "the Housing Corporation" and "the Corporation" in each place where they occur.

Textual Amendments

F356 Words in s. 218 heading substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140, 158(1), **Sch. 16 para. 80**; S.I. 1998/2244, art. 5

F357 Words in s. 218(3) substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140, 158(1), **Sch. 16 para. 78**; S.I. 1998/2244, art. 5

Marginal Citations

M67 1964 c. 56.

M68 1985 c. 69.

M69 1985 c. 69.

[[F359]**219 Disposals by Housing Corporation, [**[F358]**the Secretary of State], Scottish Homes and certain housing associations.**

(1) In any case where—

(a) the Corporation disposes of any land to a relevant housing association, or

(b) a relevant housing association disposes of any land to another relevant housing association, or

(c) in pursuance of a direction of the Corporation given under Part I of the Housing Act 1996 or Part I of the Housing Associations Act 1985 (as the case may be) requiring it to do so, a relevant housing association disposes of any of its property, other than land, to another relevant housing association, or

(d) a relevant housing association or an unregistered self-build society disposes of any land to the Corporation,

both parties to the disposal shall be treated for the purposes of tax on chargeable gains as if the land or property disposed of were acquired from the Corporation, relevant housing association or unregistered self-build society making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to the Corporation or, as the case may be, that association or society.

(2) In this section—

"the Corporation" means the Housing Corporation, **[**[F360]the Secretary of State**]** or Scottish Homes;

"relevant housing association" means a registered social landlord within the meaning of Part I of the Housing Act 1996 or a registered housing association within the meaning of the Housing Associations Act 1985;

"unregistered self-build society" has the same meaning as in the Housing Associations Act 1985.**]**

Textual Amendments

F358 Words in s. 219 heading substituted (1.11.1998) by Government of Wales Act 1998 (c. 38), ss. 140, 158(1), **Sch. 16 para. 80**; S.I. 1998/2244, art. 5

F359 S. 219 substituted (1.10.1996) by The Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325), art. 1(2), **Sch. 2 para. 20(2)**

F360 Words in s. 219(2) substituted (1.11.1998) by virtue of Government of Wales Act 1998 (c. 38), ss. 140, 158(1), **Sch. 16 para. 79**; S.I. 1998/2244, art. 5

220 Disposals by Northern Ireland housing associations.

(1) In any case where—

(a) a registered Northern Ireland housing association disposes of any land to another such association, or

(b) in pursuance of a direction of the Department of the Environment for Northern Ireland given under Chapter II of Part VII of the [M70]Housing (Northern Ireland) Order 1981 requiring it to do so, a registered Northern Ireland housing association disposes of any of its property, other than land, to another such association,

both parties to the disposal shall be treated for the purposes of tax on chargeable gains as if the land or property disposed of were acquired from the association making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that association.

(2) In subsection (1) above "registered Northern Ireland housing association" means a registered housing association within the meaning of Part VII of the Order referred to in paragraph (b) of that subsection.

Marginal Citations

M70 S.I. 1981/156 (N.I.3).

Other bodies

221 Harbour authorities.

(1) For the purposes of this Act any asset transferred on the transfer of the trade shall be deemed to be for a consideration such that no gain or loss accrues to the transferor on its transfer; and for the purposes of Schedule 2 the transferee shall be treated as if the acquisition by the transferor of any asset so transferred had been the transferee's acquisition thereof.

(2) This section applies only where the trade transferred is transferred from any body corporate other than a limited liability company to a harbour authority by or under

a certified harbour reorganisation scheme (within the meaning of section 518 of the Taxes Act) which provides also for the dissolution of the transferor.

PART VII

OTHER PROPERTY, BUSINESSES, INVESTMENTS ETC.

Private residences

222 Relief on disposal of private residence.

(1) This section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in—

(a) a dwelling-house or part of a dwelling-house which is, or has at any time in his period of ownership been, his only or main residence, or

(b) land which he has for his own occupation and enjoyment with that residence as its garden or grounds up to the permitted area.

(2) In this section "the permitted area" means, subject to subsections (3) and (4) below, an area (inclusive of the site of the dwelling-house) of 0.5 of a hectare.

[F361(3) Where the area required for the reasonable enjoyment of the dwelling-house (or of the part in question) as a residence, having regard to the size and character of the dwelling-house, is larger than 0.5 of a hectare, that larger area shall be the permitted area.**]**

(4) Where part of the land occupied with a residence is and part is not within subsection (1) above, then (up to the permitted area) that part shall be taken to be within subsection (1) above which, if the remainder were separately occupied, would be the most suitable for occupation and enjoyment with the residence.

(5) So far as it is necessary for the purposes of this section to determine which of 2 or more residences is an individual's main residence for any period—

(a) the individual may conclude that question by notice to the inspector given within 2 years from the beginning of that period but subject to a right to vary that notice by a further notice to the inspector as respects any period beginning not earlier than 2 years before the giving of the further notice,

F362(b) . . . . . .

F363 . . . . . .

(6) In the case of a man and his wife living with him—

(a) there can only be one residence or main residence for both, so long as living together and, where a notice under subsection (5)(a) above affects both the husband and the wife, it must be given by both, F364...

F365(b) . . . . . .

(7) In this section and sections 223 to 226, "the period of ownership" where the individual has had different interests at different times shall be taken to begin from the first acquisition taken into account in arriving at the expenditure which under Chapter III of Part II is allowable as a deduction in the computation of the gain to which this section applies, and in the case of a man and his wife living with him—

(a) if the one disposes of, or of his or her interest in, the dwelling-house or part of a dwelling-house which is their only or main residence to the other, and

in particular if it passes on death to the other as legatee, the other's period of ownership shall begin with the beginning of the period of ownership of the one making the disposal, and

(b) if paragraph (a) above applies, but the dwelling-house or part of a dwelling-house was not the only or main residence of both throughout the period of ownership of the one making the disposal, account shall be taken of any part of that period during which it was his only or main residence as if it was also that of the other.

(8) If at any time during an individual's period of ownership of a dwelling-house or part of a dwelling-house he—

(a) resides in living accommodation which is for him job-related [F366]..., and

(b) intends in due course to occupy the dwelling-house or part of a dwelling-house as his only or main residence,

this section and sections 223 to 226 shall apply as if the dwelling-house or part of a dwelling-house were at that time occupied by him as a residence.

[F367](8A) Subject to subsections (8B), (8C) and (9) below, for the purposes of subsection (8) above living accommodation is job-related for a person if—

(a) it is provided for him by reason of his employment, or for his spouse by reason of her employment, in any of the following cases—

(i) where it is necessary for the proper performance of the duties of the employment that the employee should reside in that accommodation;

(ii) where the accommodation is provided for the better performance of the duties of the employment, and it is one of the kinds of employment in the case of which it is customary for employers to provide living accommodation for employees;

(iii) where, there being a special threat to the employee's security, special security arrangements are in force and the employee resides in the accommodation as part of those arrangements;

or

(b) under a contract entered into at arm's length and requiring him or his spouse to carry on a particular trade, profession or vocation, he or his spouse is bound—

(i) to carry on that trade, profession or vocation on premises or other land provided by another person (whether under a tenancy or otherwise); and

(ii) to live either on those premises or on other premises provided by that other person.

(8B) If the living accommodation is provided by a company and the employee is a director of that or an associated company, subsection (8A)(a)(i) or (ii) above shall not apply unless—

(a) the company of which the employee is a director is one in which he or she has no material interest; and

(b) either—

(i) the employment is as a full-time working director, or

(ii) the company is non-profit making, that is to say, it does not carry on a trade nor do its functions consist wholly or mainly in the holding of investments or other property, or

(iii) the company is established for charitable purposes only.

(8C) Subsection (8A)(b) above does not apply if the living accommodation concerned is in whole or in part provided by—

(a) a company in which the borrower or his spouse has a material interest; or

(b) any person or persons together with whom the borrower or his spouse carries on a trade or business in partnership.

(8D) For the purposes of this section—

(a) a company is an associated company of another if one of them has control of the other or both are under the control of the same person; and

(b) "employment", "director", "full-time working director", "material interest" and "control", in relation to a body corporate, have the same meanings as they have for the purposes of Chapter II of Part V of the Taxes Act.**]**

(9) **[**[F368]Subsections (8A)(b) and (8C) above**]** shall apply for the purposes of subsection (8) above only in relation to residence on or after 6th April 1983 in living accommodation which is job-related **[**[F369]for the purposes of that subsection**]**.

(10) Apportionments of consideration shall be made wherever required by this section or sections 223 to 226 and, in particular, where a person disposes of a dwelling-house only part of which is his only or main residence.

Textual Amendments

F361 S. 222(3) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 59(2)**

F362 S. 222(5)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 59(3)(a), **Sch. 41 Pt. V(10)**

F363 Words in s. 222(5) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 59(3)(b), **Sch. 41 Pt. V(10)**

F364 Word in s. 222(6) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 59(4), **Sch. 41 Pt. V(10)**

F365 S. 222(6)(b) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 59(4), **Sch. 41 Pt. V(10)**

F366 Words in s. 222(8)(a) repealed (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by Finance Act 1999 (c. 16), Sch. 4 para. 17(2), **Sch. 20 Pt. III(7)**

F367 S. 222(8A)-(8D) inserted (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 17(3)**

F368 Words in s. 222(9) substituted (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 17(4)(a)**

F369 Words in s. 222(9) substituted (with effect in accordance with Sch. 4 para. 18(4) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 4 para. 17(4)(b)**

223 Amount of relief.

(1) No part of a gain to which section 222 applies shall be a chargeable gain if the dwelling-house or part of a dwelling-house has been the individual's only or main residence throughout the period of ownership, or throughout the period of ownership except for all or any part of the last 36 months of that period.

(2) Where subsection (1) above does not apply, a fraction of the gain shall not be a chargeable gain, and that fraction shall be—

(a) the length of the part or parts of the period of ownership during which the dwelling-house or the part of the dwelling-house was the individual's only or main residence, but inclusive of the last 36 months of the period of ownership in any event, divided by

(b) the length of the period of ownership.

(3) For the purposes of subsections (1) and (2) above—

(a) a period of absence not exceeding 3 years (or periods of absence which together did not exceed 3 years), and in addition

(b) any period of absence throughout which the individual worked in an employment or office all the duties of which were performed outside the United Kingdom, and in addition

(c) any period of absence not exceeding 4 years (or periods of absence which together did not exceed 4 years) throughout which the individual was prevented from residing in the dwelling-house or part of the dwelling-house in consequence of the situation of his place of work or in consequence of any condition imposed by his employer requiring him to reside elsewhere, being a condition reasonably imposed to secure the effective performance by the employee of his duties,

shall be treated as if in that period of absence the dwelling-house or the part of the dwelling-house was the individual's only or main residence if both before and after the period there was a time when the dwelling-house was the individual's only or main residence.

(4) Where a gain to which section 222 applies accrues to any individual and the dwelling-house in question or any part of it is or has at any time in his period of ownership been wholly or partly let by him as residential accommodation, the part of the gain, if any, which (apart from this subsection) would be a chargeable gain by reason of the letting, shall be such a gain only to the extent, if any, to which it exceeds whichever is the lesser of—

(a) the part of the gain which is not a chargeable gain by virtue of the provisions of subsection (1) to (3) above or those provisions as applied by section 225; and

(b) £40,000.

(5) Where at any time the number of months specified in subsections (1) and (2)(a) above is 36, the Treasury may by order amend those subsections by substituting references to 24 for the references to 36 in relation to disposals on or after such date as is specified in the order.

(6) Subsection (5) above shall also have effect as if 36 (in both places) read 24 and as if 24 read 36.

(7) In this section—

"period of absence" means a period during which the dwelling-house or the part of the dwelling-house was not the individual's only or main residence and throughout which he had no residence or main residence eligible for relief under this section; and

"period of ownership" does not include any period before 31st March 1982.

224 Amount of relief: further provisions.

(1) If the gain accrues from the disposal of a dwelling-house or part of a dwelling-house part of which is used exclusively for the purpose of a trade or business, or of a

profession or vocation, the gain shall be apportioned and section 223 shall apply in relation to the part of the gain apportioned to the part which is not exclusively used for those purposes.

(2) If at any time in the period of ownership there is a change in what is occupied as the individual's residence, whether on account of a reconstruction or conversion of a building or for any other reason, or there have been changes as regards the use of part of the dwelling-house for the purpose of a trade or business, or of a profession or vocation, or for any other purpose, the relief given by section 223 **[**F370may be adjusted in a manner which is just and reasonable**]**.

(3) Section 223 shall not apply in relation to a gain if the acquisition of, or of the interest in, the dwelling-house or the part of a dwelling-house was made wholly or partly for the purpose of realising a gain from the disposal of it, and shall not apply in relation to a gain so far as attributable to any expenditure which was incurred after the beginning of the period of ownership and was incurred wholly or partly for the purpose of realising a gain from the disposal.

Textual Amendments

F370 Words in s. 224(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 60**

225 Private residence occupied under terms of settlement.

Sections 222 to 224 shall also apply in relation to a gain accruing to a trustee on a disposal of settled property being an asset within section 222(1) where, during the period of ownership of the trustee, the dwelling-house or part of the dwelling-house mentioned in that subsection has been the only or main residence of a person entitled to occupy it under the terms of the settlement, and in those sections as so applied—

(a) references to the individual shall be taken as references to the trustee except in relation to the occupation of the dwelling-house or part of the dwelling-house, and

(b) the notice which may be given to the inspector under section 222(5)(a) shall be a joint notice by the trustee and the person entitled to occupy the dwelling-house or part of the dwelling-house.

226 Private residence occupied by dependent relative before 6th April 1988.

(1) Subject to subsection (3) below, this section applies to a gain accruing to an individual so far as attributable to the disposal of, or of an interest in, a dwelling-house or part of a dwelling-house which, on 5th April 1988 or at any earlier time in his period of ownership, was the sole residence of a dependent relative of the individual, provided rent-free and without any other consideration.

(2) If the individual so claims, such relief shall be given in respect of it and its garden or grounds as would be given under sections 222 to 224 if the dwelling-house (or part of the dwelling-house) had been the individual's only or main residence in the period of residence by the dependent relative, and shall be so given in addition to any relief available under those sections apart from this section.

(3) If in a case within subsection (1) above the dwelling-house or part ceases, whether before 6th April 1988 or later, to be the sole residence (provided as mentioned above)

of the dependent relative, any subsequent period of residence beginning on or after that date by that or any other dependent relative shall be disregarded for the purposes of subsection (2) above.

(4) Not more than one dwelling-house (or part of a dwelling-house) may qualify for relief as being the residence of a dependent relative of the claimant at any one time nor, in the case of a man and his wife living with him, as being the residence of a dependent relative of the claimant or of the claimant's husband or wife at any one time.

F371(5) . . . . . .

(6) In this section "dependent relative" means, in relation to an individual—

(a) any relative of his or of his wife who is incapacitated by old age or infirmity from maintaining himself, or

(b) his or his wife's mother who, whether or not incapacitated, is either widowed, or living apart from her husband, or a single woman in consequence of dissolution or annulment of marriage.

(7) If the individual mentioned in subsection (6) above is a woman the references in that subsection to the individual's wife shall be construed as references to the individual's husband.

Textual Amendments

F371 S. 226(5) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 61, **Sch. 41 Pt. V(10)**

Employee share ownership trusts

227 Conditions for roll-over relief.

(1) Relief is available under section 229(1) where each of the 6 conditions set out in subsections (2) to (7) below is fulfilled.

(2) The first condition is that a person ("the claimant") makes a disposal of shares, or his interest in shares, to the trustees of a trust which—

(a) is a qualifying employee share ownership trust at the time of the disposal, and

(b) was established by a company ("the founding company") which immediately after the disposal is a trading company or the holding company of a trading group.

(3) The second condition is that the shares—

(a) are shares in the founding company,

(b) form part of the ordinary share capital of the company,

(c) are fully paid up,

(d) are not redeemable, and

(e) are not subject to any restrictions other than restrictions which attach to all shares of the same class or a restriction authorised by paragraph 7(2) of Schedule 5 to the M71Finance Act 1989.

(4) The third condition is that, at any time in the entitlement period, the trustees—

(a) are beneficially entitled to not less than 10 per cent. of the ordinary share capital of the founding company,

(b) are beneficially entitled to not less than 10 per cent. of any profits available for distribution to equity holders of the founding company, and

(c) would be beneficially entitled to not less than 10 per cent. of any assets of the founding company available for distribution to its equity holders on a winding-up.

(5) The fourth condition is that the claimant obtains consideration for the disposal and, at any time in the acquisition period, all the amount or value of the consideration is applied by him in making an acquisition of assets or an interest in assets ("replacement assets") which—

(a) are, immediately after the time of the acquisition, chargeable assets in relation to the claimant, and

(b) are not shares in, or debentures issued by, the founding company or a company which is (at the time of the acquisition) in the same group as the founding company;

but the preceding provisions of this subsection shall have effect without the words ", at any time in the acquisition period," if the acquisition is made pursuant to an unconditional contract entered into in the acquisition period.

(6) The fifth condition is that, at all times in the proscribed period, there are no unauthorised arrangements under which the claimant or a person connected with him may be entitled to acquire any of the shares, or an interest in or right deriving from any of the shares, which are the subject of the disposal by the claimant.

(7) The sixth condition is that no chargeable event occurs in relation to the trustees in—

(a) the chargeable period in which the claimant makes the disposal,

(b) the chargeable period in which the claimant makes the acquisition, or

(c) any chargeable period falling after that mentioned in paragraph (a) above and before that mentioned in paragraph (b) above.

Marginal Citations

M71 1989 c. 26.

228 Conditions for relief: supplementary.

(1) This section applies for the purposes of section 227.

(2) The entitlement period is the period beginning with the disposal and ending on the expiry of 12 months beginning with the date of the disposal.

(3) The acquisition period is the period beginning with the disposal and ending on the expiry of 6 months beginning with—

(a) the date of the disposal, or

(b) if later, the date on which the third condition (set out in section 227(4)) first becomes fulfilled.

(4) The proscribed period is the period beginning with the disposal, and ending on—

(a) the date of the acquisition, or

(b) if later, the date on which the third condition (set out in section 227(4)) first becomes fulfilled.

(5) All arrangements are unauthorised unless—

(a) they arise wholly from a restriction authorised by paragraph 7(2) of Schedule 5 to the [M72]Finance Act 1989, or

(b) they only allow one or both of the following as regards shares, interests or rights, namely, acquisition by a beneficiary under the trust and appropriation under an approved profit sharing scheme.

(6) An asset is a chargeable asset in relation to the claimant at a particular time if, were the asset to be disposed of at that time, any gain accruing to him on the disposal would be a chargeable gain, and either—

(a) at that time he is resident or ordinarily resident in the United Kingdom, or

(b) he would be chargeable to capital gains tax under section 10(1) in respect of the gain, or it would form part of his chargeable profits for corporation tax purposes by virtue of section 10(3),

unless (were he to dispose of the asset at that time) the claimant would fall to be regarded for the purposes of any double taxation relief arrangements as not liable in the United Kingdom to tax on any gains accruing to him on the disposal.

(7) The question whether a trust is at a particular time a qualifying employee share ownership trust shall be determined in accordance with Schedule 5 to the [M73]Finance Act 1989; and "chargeable event" in relation to trustees has the meaning given by section 69 of that Act.

(8) The expressions "holding company", "trading company" and "trading group" have the meanings given by **[**[F372]paragraph 22 of Schedule A1**]**; and "group" (except in the expression "trading group") shall be construed in accordance with section 170.

(9) "Ordinary share capital" in relation to the founding company means all the issued share capital (by whatever name called) of the company, other than capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company.

(10) Schedule 18 to the Taxes Act (group relief: equity holders and profits or assets available for distribution) shall apply for the purposes of section 227(4) as if—

(a) the trustees were a company,

(b) the references to section 413(7) to (9) of that Act were references to section 227(4),

(c) the reference in paragraph 7(1)(a) to section 413(7) of that Act were a reference to section 227(4), and

(d) paragraph 7(1)(b) were omitted.

Textual Amendments

F372 Words in s. 228(8) substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 140(5)(a)**

Marginal Citations

M72 1989 c. 26.

M73 1989 c. 26.

229 The relief.

(1) In a case where relief is available under this subsection the claimant shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

(a) as if the consideration for the disposal were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him, and

(b) as if the amount or value of the consideration for the acquisition were reduced by the excess of the amount or value of the actual consideration for the disposal over the amount of the consideration which the claimant is treated as receiving under paragraph (a) above.

(2) Relief is available under subsection (3) below where—

(a) relief would be available under subsection (1) above but for the fact that part only of the amount or value mentioned in section 227(5) is applied as there mentioned, and

(b) all the amount or value so mentioned except for a part which is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal is so applied.

(3) In a case where relief is available under this subsection the claimant shall, on making a claim in the period of 2 years beginning with the acquisition, be treated for the purposes of this Act—

(a) as if the amount of the gain accruing on the disposal were reduced to the amount of the part mentioned in subsection (2)(b) above, and

(b) as if the amount or value of the consideration for the acquisition were reduced by the amount by which the gain is reduced under paragraph (a) above.

(4) Nothing in subsection (1) or (3) above shall affect the treatment for the purposes of this Act of the other party to the disposal or of the other party to the acquisition.

(5) The provisions of this Act fixing the amount of the consideration deemed to be given for a disposal or acquisition shall be applied before the preceding provisions of this section are applied.

230 Dwelling-houses: special provision.

(1) Subsection (2) below applies where—

(a) a claim is made under section 229,

(b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset is a dwelling-house or part of a dwelling-house or land, and

(d) there was a time in the period beginning with the acquisition and ending with the time when section 229(1) or (3) falls to be applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.

(3) Subsection (4) below applies where—

(a) the provisions of section 229(1) or (3) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consists of a dwelling-house or part of a dwelling-house or land, and

(c) there is a time after section 229(1) or (3) has been applied such that, if the asset (or an interest in it) were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(4) In such a case—

(a) the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but

(b) any gain treated as accruing in consequence of the application of paragraph (a) above shall be treated as accruing at the time mentioned in subsection (3)(c) above or, if there is more than one such time, at the earliest of them.

(5) Subsection (6) below applies where—

(a) a claim is made under section 229,

(b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset was an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,

(d) the option has been exercised, and

(e) there was a time in the period beginning with the exercise of the option and ending with the time when section 229(1) or (3) falls to be applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(6) In such a case the option shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.

(7) Subsection (8) below applies where—

(a) the provisions of section 229(1) or (3) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consisted of an option to acquire (or to acquire an interest in) a dwelling-house or part of a dwelling-house or land,

(c) the option has been exercised, and

(d) there is a time after section 229(1) or (3) has been applied such that, if the asset acquired on exercise of the option were disposed of at that time, it would

be within section 222(1) and the individual there mentioned would be the claimant or the claimant's spouse.

(8) In such a case—

(a) the option shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly, but

(b) any gain treated as accruing in consequence of the application of paragraph (a) above shall be treated as accruing at the time mentioned in subsection (7)(d) above or, if there is more than one such time, at the earliest of them.

(9) References in this section to an individual include references to a person entitled to occupy under the terms of a settlement.

231 Shares: special provision.

(1) Subsection (2) below applies where—

(a) a claim is made under section 229,

(b) immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, any replacement asset was a chargeable asset in relation to the claimant,

(c) the asset consists of shares, and

(d) in the period beginning with the acquisition and ending when section 229(1) or (3) falls to be applied relief is claimed under Chapter III of Part VII of the Taxes Act [F373]... in respect of the asset.

(2) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant.

(3) Subsection (4) below applies where—

(a) the provisions of section 229(1) or (3) have been applied,

(b) any replacement asset which, immediately after the time of the acquisition mentioned in section 227(5) and apart from this section, was a chargeable asset in relation to the claimant consists of shares, and

(c) after section 229(1) or (3) has been applied relief is claimed under Chapter III of Part VII of the Taxes Act in respect of the asset.

(4) In such a case the asset shall be treated as if, immediately after the time of the acquisition mentioned in section 227(5), it was not a chargeable asset in relation to the claimant and adjustments shall be made accordingly.

(5) Subsection (4) above shall also apply where section 33(1) or (3) of the [M74]Finance Act 1990 has applied and the claimant acquired the replacement asset in a chargeable period beginning before 6th April 1992.

Textual Amendments

F373 Words in s. 231(1)(d) repealed (3.5.1994) by Finance Act 1994 (c. 9), Sch. 15 para. 34, **Sch. 26 Pt. V(17)**

Marginal Citations
M74 1990 c. 29.

232 Chargeable event when replacement assets owned.

(1) Subsection (3) below applies where—

(a) the provisions of section 229(1) or (3) are applied,

(b) a chargeable event occurs in relation to the trustees on or after the date on which the disposal is made (and whether the event occurs before or after the provisions are applied),

(c) the claimant was neither an individual who died before the chargeable event occurs nor trustees of a settlement which ceased to exist before the chargeable event occurs, and

(d) the condition set out below is fulfilled.

(2) The condition is that, at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the replacement assets.

(3) In a case where this subsection applies, the claimant or connected person (as the case may be) shall be deemed for all purposes of this Act—

(a) to have disposed of all the replacement assets immediately before the time when the chargeable event occurs, and

(b) immediately to have reacquired them,

at the relevant value.

(4) The relevant value is such value as secures on the deemed disposal a chargeable gain equal to—

(a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or

(b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).

(5) In a case where subsection (3) above would apply if “all" read “any of" in subsection (2) above, subsection (3) shall nevertheless apply, but as if—

(a) in subsection (3)(a) “all the replacement assets" read “ the replacement assets concerned ”, and

(b) the relevant value were reduced to whatever value is just and reasonable.

(6) Subsection (7) below applies where—

(a) subsection (3) above applies (whether or not by virtue of subsection (5) above), and

(b) before the time when the chargeable event occurs anything has happened as regards any of the replacement assets such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).

(7) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—

(a) the relevant value were reduced (or further reduced) to whatever value is just and reasonable, or

(b) the relevant value were such value as secures that on the deemed disposal neither a gain nor a loss accrues (if that is just and reasonable);

but paragraph (a) above shall not apply so as to reduce the relevant value below that mentioned in paragraph (b) above.

(8) For the purposes of subsection (6)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (4)(a) or (b) above, as the case may be).

(9) In this section "chargeable event" in relation to trustees has the meaning given by section 69 of the [M75]Finance Act 1989.

Marginal Citations
M75 1989 c. 26.

233 Chargeable event when replacement property owned.

(1) Subsection (3) below applies where—

(a) paragraphs (a) to (c) of section 232(1) are fulfilled, and

(b) the condition set out below is fulfilled.

(2) The condition is that—

(a) before the time when the chargeable event occurs, all the gain carried forward by virtue of section 229(1) or (3) was in turn carried forward from all the replacement assets to other property on a replacement of business assets, and

(b) at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the property.

(3) In a case where this subsection applies, the claimant or connected person (as the case may be) shall be deemed for all purposes of this Act—

(a) to have disposed of all the property immediately before the time when the chargeable event occurs, and

(b) immediately to have reacquired it,

at the relevant value.

(4) The relevant value is such value as secures on the deemed disposal a chargeable gain equal to—

(a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or

(b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).

(5) In a case where subsection (3) above would apply if "all the" in subsection (2) above (in one or more places) read "any of the", subsection (3) shall nevertheless apply, but as if—

(a) in subsection (3)(a) "all the property" read " the property concerned ", and
(b) the relevant value were reduced to whatever value is just and reasonable.

(6) Subsection (7) below applies where—
(a) subsection (3) above applies (whether or not by virtue of subsection (5) above), and
(b) before the time when the chargeable event occurs anything has happened as regards any of the replacement assets, or any other property, such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).

(7) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
(a) the relevant value were reduced (or further reduced) to whatever value is just and reasonable, or
(b) the relevant value were such value as secures that on the deemed disposal neither a gain nor a loss accrues (if that is just and reasonable);
but paragraph (a) above shall not apply so as to reduce the relevant value below that mentioned in paragraph (b) above.

(8) For the purposes of subsections (2) and (6)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (4)(a) or (b) above, as the case may be).

(9) For the purposes of subsection (2) above a gain is carried forward from assets to other property on a replacement of business assets if, by one or more claims under sections 152 to 158, the chargeable gain accruing on a disposal of the assets is reduced, and as a result an amount falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of the other property.

234 Chargeable events when bonds owned.

(1) Subsection (3) below applies where—
(a) paragraphs (a) to (c) of section 232(1) are fulfilled, and
(b) the condition set out below is fulfilled.

(2) The condition is that—
(a) all the replacement assets were shares (new shares) in a company or companies,
(b) there has been a transaction to which section 116(10) applies and as regards which all the new shares constitute the old asset and qualifying corporate bonds constitute the new asset, and
(c) at the time the chargeable event occurs, the claimant or a person then connected with him is beneficially entitled to all the bonds.

(3) In a case where this subsection applies, a chargeable gain shall be deemed to have accrued to the claimant or connected person (as the case may be); and the gain shall be deemed to have accrued immediately before the time when the chargeable event occurs and to be of an amount equal to the relevant amount.

(4) The relevant amount is an amount equal to the lesser of—

(a) the first amount, and
(b) the second amount.

(5) The first amount is—
(a) the amount of the chargeable gain that would be deemed to accrue under 116(10)(b) if there were a disposal of all the bonds at the time the chargeable event occurs, or
(b) nil, if an allowable loss would be so deemed to accrue if there were such a disposal.

(6) The second amount is an amount equal to—
(a) the amount by which the amount or value of the consideration mentioned in section 229(1)(b) was treated as reduced by virtue of that provision (where it applied), or
(b) the amount by which the amount or value of the consideration mentioned in section 229(3)(b) was treated as reduced by virtue of that provision (where it applied).

(7) In a case where subsection (3) above would apply if "all the" in subsection (2) above (in one or more places) read " any of the ", subsection (3) shall nevertheless apply, but as if—
(a) in subsection (5) above "all the bonds" read " the bonds concerned ",
(b) the second amount were reduced to whatever amount is just and reasonable, and
(c) the relevant amount were reduced accordingly.

(8) Subsection (9) below applies where—
(a) subsection (3) above applies (whether or not by virtue of subsection (7) above), and
(b) before the time when the chargeable event occurs anything has happened as regards any of the new shares, or any of the bonds, such that it can be said that a charge has accrued in respect of any of the gain carried forward by virtue of section 229(1) or (3).

(9) If in such a case it is just and reasonable for subsection (3) above to apply as follows, it shall apply as if—
(a) the second amount were reduced (or further reduced) to whatever amount is just and reasonable, and
(b) the relevant amount were reduced (or further reduced) accordingly (if the second amount is less than the first amount),

but nothing in this subsection shall have the effect of reducing the second amount below nil.

(10) For the purposes of subsection (8)(b) above the gain carried forward by virtue of section 229(1) or (3) is the gain represented by the amount which by virtue of either of those provisions falls to be deducted from the expenditure allowable in computing a gain accruing on the disposal of replacement assets (that is, the amount found under subsection (6)(a) or (b) above, as the case may be).

235 Information.

(1) An inspector may by notice require a return to be made by the trustees of an employee share ownership trust in a case where—

(a) a disposal of shares, or an interest in shares, has at any time been made to them, and

(b) a claim is made under section 229(1) or (3).

(2) Where he requires such a return to be made the inspector shall specify the information to be contained in it.

(3) The information which may be specified is information the inspector needs for the purposes of sections 232 to 234 and may include information about—

(a) expenditure incurred by the trustees;

(b) assets acquired by them;

(c) transfers of assets made by them.

(4) The information which may be required under subsection (3)(a) above may include the purpose of the expenditure and the persons receiving any sums.

(5) The information which may be required under subsection (3)(b) above may include the persons from whom the assets were acquired and the consideration furnished by the trustees.

(6) The information which may be required under subsection (3)(c) above may include the persons to whom assets were transferred and the consideration furnished by them.

(7) In a case where section 229(1) or (3) has been applied, the inspector shall send to the trustees of the employee share ownership trust concerned a certificate stating—

(a) that the provision concerned has been applied, and

(b) the effect of the provision on the consideration for the disposal or on the amount of the gain accruing on the disposal (as the case may be).

(8) For the purposes of this section, the question whether a trust is an employee share ownership trust shall be determined in accordance with Schedule 5 to the [M76]Finance Act 1989.

Marginal Citations
M76 1989 c. 26.

236 Prevention of double charge.

(1) Where a charge can be said to accrue by virtue of section 232 or 233 in respect of any of the gain carried forward by virtue of section 229(1) or (3), so much of the gain charged shall not be capable of being carried forward (from assets to other property or from property to other property) under sections 152 to 158 on a replacement of business assets.

(2) For the purpose of construing subsection (1) above—

(a) what of the gain has been charged shall be found in accordance with what is just and reasonable;

(b) section 233(8) and (9) shall apply.

(3) In a case where—

(a) section 234 applies in the case of bonds,

(b) subsequently a disposal of the bonds occurs as mentioned in section 116(10)(b), and

(c) a chargeable gain is deemed to accrue under section 116(10)(b),

the chargeable gain shall be reduced by the relevant amount found under section 234 or (if the amount exceeds the gain) shall be reduced to nil.

(4) The relevant amount shall be apportioned where the subsequent disposal is of some of the bonds mentioned in subsection (3)(a) above; and subsection (3) shall apply accordingly.

Superannuation funds, profit sharing schemes, employee trusts etc.

237 Superannuation funds, annuities and annual payments.

No chargeable gain shall accrue to any person on the disposal of a right to, or to any part of—

(a) any allowance, annuity or capital sum payable out of any superannuation fund, or under any superannuation scheme, established solely or mainly for persons employed in a profession, trade, undertaking or employment, and their dependants,

(b) an annuity granted otherwise than under a contract for a deferred annuity by a company as part of its business of granting annuities on human life, whether or not including instalments of capital, or an annuity granted or deemed to be granted under the [M77]Government Annuities Act 1929, or

(c) annual payments which are due under a covenant made by any person and which are not secured on any property.

Marginal Citations

M77 1929 c. 29.

[F374]237A Share option schemes: release and replacement of options.

(1) This section applies in any case where a right to acquire shares in a body corporate ("the old right") which was obtained by an individual by reason of his office or employment as a director or employee of that or any other body corporate is released in whole or in part for a consideration which consists of or includes the grant to that individual of another right ("the new right") to acquire shares in that or any other body corporate.

(2) As respects the person to whom the new right is granted—

(a) without prejudice to subsection (1) above, the new right shall not be regarded for the purposes of capital gains tax as consideration for the release of the old right;

(b) the amount or value of the consideration given by him or on his behalf for the acquisition of the new right shall be taken for the purposes of section 38(1) to be the amount or value of the consideration given by him or on his behalf for the old right; and

(c) any consideration paid for the acquisition of the new right shall be taken to be expenditure falling within section 38(1)(b).

(3) As respects the grantor of the new right, in determining for the purposes of this Act the amount or value of the consideration received for the new right, the release of the old right shall be disregarded.**]**

Textual Amendments

F374 S. 237A inserted (with effect in accordance with s. 112(3) of the amending Act) by Finance Act 1996 (c. 8), **s. 112(1)**

238 Approved profit sharing and share option schemes.

(1) Notwithstanding anything in a profit sharing scheme approved under Schedule 9 of the Taxes Act or in paragraph 2(2) of that Schedule or in the trust instrument relating to that scheme, for the purposes of capital gains tax a person who is a participant in relation to that scheme shall be treated as absolutely entitled to his shares as against the trustees of the scheme.

(2) For the purposes of capital gains tax—

(a) no deduction shall be made from the consideration for the disposal of any shares by reason only that an amount determined under section 186 or 187 of or Schedule 9 or 10 to the Taxes Act is chargeable to income tax under section 186(3) or (4) of that Act;

(b) any charge to income tax by virtue of section 186(3) of that Act shall be disregarded in determining whether a distribution is a capital distribution within the meaning of section 122(5)(b);

(c) nothing in any provision of section 186 or 187 of or Schedule 9 or 10 to that Act with respect to—

(i) the order in which any of a participant's shares are to be treated as disposed of for the purposes of those provisions as they have effect in relation to profit sharing schemes, or

(ii) the shares in relation to which an event is to be treated as occurring for any such purpose,

shall affect the rules applicable to the computation of a gain accruing on a part disposal of a holding of shares or other securities which were acquired at different times; and

(d) a gain accruing on an appropriation of shares to which section 186(11) of that Act applies shall not be a chargeable gain.

(3) In this section "participant" and "the trust instrument" have the meanings given by section 187 of the Taxes Act.

F375(4) . . . . . .

Textual Amendments

F375 S. 238(4) repealed (with effect in accordance with s. 112(2)(3) of the amending Act) by Finance Act 1996 (c. 8), s. 112(2), **Sch. 41 Pt. V(5)**

239 Employee trusts.

(1) Where—

(a) a close company disposes of an asset to trustees in circumstances such that the disposal is a disposition which by virtue of section 13 of the [M78]Inheritance Tax Act 1984 (employee trusts) is not a transfer of value for the purposes of inheritance tax, or

(b) an individual disposes of an asset to trustees in circumstances such that the disposal is an exempt transfer by virtue of section 28 of that Act (employee trusts: inheritance tax),

this Act shall have effect in relation to the disposal in accordance with subsections (2) and (3) below.

(2) Section 17(1) shall not apply to the disposal; and if the disposal is by way of gift or is for a consideration not exceeding the sums allowable as a deduction under section 38—

(a) the disposal, and the acquisition by the trustees, shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

(b) where the trustees dispose of the asset, its acquisition by the company or individual shall be treated as its acquisition by the trustees.

Paragraph (b) above also applies where section 149(1) of the 1979 Act applied on the disposal of an asset to trustees who have not disposed of it before the coming into force of this section.

(3) Where the disposal is by a close company, section 125(1) shall apply to the disposal as if for the reference to market value there were substituted a reference to market value or the sums allowable as a deduction under section 38, whichever is the less.

(4) Subject to subsection (5) below, this Act shall also have effect in accordance with subsection (2) above in relation to any disposal made by a company other than a close company if—

(a) the disposal is made to trustees otherwise than under a bargain made at arm's length, and

(b) the property disposed of is to be held by them on trusts of the description specified in section 86(1) of the [M79]Inheritance Tax Act 1984 (that is to say, those in relation to which the said section 13 of that Act has effect) and the persons for whose benefit the trusts permit the property to be applied include all or most of either—

(i) the persons employed by or holding office with the company, or

(ii) the persons employed by or holding office with the company or any one or more subsidiaries of the company.

(5) Subsection (4) above does not apply if the trusts permit any of the property to be applied at any time (whether during any such period as is referred to in the said section 86(1) or later) for the benefit of—

(a) a person who is a participator in the company ("the donor company"), or

(b) any other person who is a participator in any other company that has made a disposal of property to be held on the same trusts as the property disposed of by the donor company, being a disposal in relation to which this Act has had effect in accordance with subsection (2) above, or

(c) any other person who has been a participator in the donor company or any such company as is mentioned in paragraph (b) above at any time after, or during the 10 years before, the disposal made by that company, or

(d) any person who is connected with a person within paragraph (a), (b) or (c) above.

(6) The participators in a company who are referred to in subsection (5) above do not include any participator who—

(a) is not beneficially entitled to, or to rights entitling him to acquire, 5 per cent. or more of, or of any class of the shares comprised in, its issued share capital, and

(b) on a winding-up of the company would not be entitled to 5 per cent. or more of its assets;

and in determining whether the trusts permit property to be applied as mentioned in that subsection, no account shall be taken—

(i) of any power to make a payment which is the income of any person for any of the purposes of income tax, or would be the income for any of those purposes of a person not resident in the United Kingdom if he were so resident, or

(ii) if the trusts are those of a profit sharing scheme approved under Schedule 9 to the Taxes Act of any power to appropriate shares in pursuance of the scheme.

(7) In subsection (4) above "subsidiary" has the meaning given by section 736 of the [M80]Companies Act 1985 and in subsections (5) and (6) above "participator" has the meaning given in section 417(1) of the Taxes Act, except that it does not include a loan creditor.

(8) In this section "close company" includes a company which, if resident in the United Kingdom, would be a close company as defined in section 288.

Marginal Citations

M78 1984 c. 51.
M79 1984 c. 51.
M80 1985 c. 6.

I[F376]Retirement benefits schemes

Textual Amendments

F376 S. 239A and cross-heading inserted (with application in accordance with s. 61(3) of the amending Act) by Finance Act 1995 (c. 4), **s. 61(2)**

239A Cessation of approval of certain schemes.

(1) This section applies where tax is charged in accordance with section 591C of the Taxes Act (tax on certain retirement benefits schemes whose approval ceases to have effect).

(2) For the purposes of this Act the assets which at the relevant time are held for the purposes of the scheme—

(a) shall be deemed to be acquired at that time for a consideration equal to the amount on which tax is charged by virtue of section 591C(2) of the Taxes Act by the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at that time; but

(b) shall not be deemed to be disposed of by any person at that time;

and in this subsection "the relevant time" means the time immediately before the date of the cessation of the approval of the scheme.

(3) Expressions used in subsection (2) above and in section 591C of the Taxes Act have the same meanings in that subsection as in that section.**]**

[F377 Personal pension schemes

Textual Amendments

F377 S. 239B and cross-heading inserted (with effect in accordance with s. 95(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 95(3)**

239B Withdrawal of approval of approved arrangements.

(1) This section applies where tax is charged in accordance with section 650A of the Taxes Act (tax charged on the withdrawal of the Board's approval in relation to approved personal pension arrangements).

(2) For the purposes of this Act the appropriate part of the assets which at the relevant time are held for the purposes of the relevant scheme—

(a) shall be deemed to be acquired at that time for a consideration equal to the amount on which tax is charged by virtue of section 650A(2) of the Taxes Act; but

(b) shall not be deemed to be disposed of by any person at that time.

(3) The person who shall be deemed in accordance with subsection (2)(a) above to have acquired the appropriate part of the assets shall be the person who would be chargeable in respect of a chargeable gain accruing on a disposal of the assets at the relevant time.

(4) In this section—

"the appropriate part" and "the relevant time" have the meanings given by subsection (3) of section 650A of the Taxes Act for the purposes of subsection (2) of that section; and

"the relevant scheme" has the same meaning as in that section.**]**

Leases

240 Leases of land and other assets.

Schedule 8 shall have effect as respects leases of land and, to the extent specified in paragraph 9 of that Schedule, as respects leases of property other than land.

241 Furnished holiday lettings.

(1) The following provisions of this section shall have effect with respect to the treatment for the purposes of tax on chargeable gains of the commercial letting of furnished holiday accommodation in the United Kingdom.

(2) Section 504 of the Taxes Act (definitions relating to furnished holiday lettings) shall have effect for the purposes of this section as it has effect for the purposes of section 503 of that Act.

(3) Subject to subsections (4) to (9) below, for the purposes of sections 152 to 157, 165 and 253 and **[**F378Schedule A1 F379...**]**—

[F380(a) any Schedule A business (within the meaning of the Taxes Act) which consists in the commercial letting of furnished holiday accommodation in the United Kingdom shall be treated as a trade, and**]**

(b) all such lettings made by a particular person or partnership or body of persons shall be treated as one trade.

(4) Subject to subsection (5) below, for the purposes of the sections mentioned in subsection (3) above as they apply by virtue of this section, where in any chargeable period a person makes a commercial letting of furnished holiday accommodation—

(a) the accommodation shall be taken to be used in that period only for the purposes of the trade of making such lettings; and

(b) that trade shall be taken to be carried on throughout that period.

(5) Subsection (4) above does not apply to any part of a chargeable period during which the accommodation is neither let commercially nor available to be so let unless it is prevented from being so let or available by any works of construction or repair.

(6) Where—

(a) a gain to which section 222 applies accrues to any individual on the disposal of an asset; and

(b) by virtue of subsection (3) above the amount or value of the consideration for the acquisition of the asset is treated as reduced under section 152 or 153,

the gain to which section 222 applies shall be reduced by the amount of the reduction mentioned in paragraph (b) above.

(7) Where there is a letting of accommodation only part of which is holiday accommodation such apportionments shall be made for the purposes of this section as **[**F381are**]** just and reasonable.

(8) Where a person has been charged to tax in respect of chargeable gains otherwise than in accordance with the provisions of this section, such assessment, reduction or discharge of an assessment or, where a claim for repayment is made, such repayment, shall be made as may be necessary to give effect to those provisions.

Textual Amendments

F378 Words in s. 241(3) substituted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 8**

F379 Words in s. 241(3) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

F380 S. 241(3)(a) substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 62** (with Sch. 5 para. 73)

F381 Word in s. 241(7) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 62**

Modifications etc. (not altering text)

C173 S. 241(3) modified (with effect in accordance with s. 39(4)(a)(5) of the amending Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 36**

Part disposals

242 Small part disposals.

(1) This section applies to a transfer of land forming part only of a holding of land, where—

(a) the amount or value of the consideration for the transfer does not exceed one-fifth of the market value of the holding as it subsisted immediately before the transfer, and

(b) the transfer is not one which, by virtue of section 58 or 171(1), is treated as giving rise to neither a gain nor a loss.

(2) Subject to subsection (3) below, if the transferor so claims, the transfer shall not be treated for the purposes of this Act as a disposal, but all sums which, if it had been so treated, would have been brought into account as consideration for that disposal in the computation of the gain shall be deducted from any expenditure allowable under Chapter III of Part II as a deduction in computing a gain on any subsequent disposal of the holding.

[[F382](2A) A claim under subsection (2) above shall be made—

(a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the transfer is made;

(b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the transfer is made.**]**

(3) This section shall not apply—

(a) if the amount or value of the consideration for the transfer exceeds £20,000, or

(b) where in the year of assessment in which the transfer is made, the transferor made any other disposal of land, if the total amount or value of the consideration for all disposals of land made by the transferor in that year exceeds £20,000.

(4) No account shall be taken under subsection (3) above of any transfer of land to which section 243 applies.

(5) In relation to a transfer which is not for full consideration in money or money's worth "the amount or value of the consideration" in this section shall mean the market value of the land transferred.

(6) For the purposes of this section the holding of land shall comprise only the land in respect of which the expenditure allowable under paragraphs (a) and (b) of section 38(1) would be apportioned under section 42 if the transfer had been treated as a disposal (that is, as a part disposal of the holding).

(7) In this section references to a holding of land include references to any estate or interest in a holding of land, not being an estate or interest which is a wasting asset, and references to part of a holding shall be construed accordingly.

Textual Amendments

F382 S. 242(2A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 37**

243 Part disposal to authority with compulsory powers.

(1) This section applies to a transfer of land forming part only of a holding of land to an authority exercising or having compulsory powers where—

(a) the amount or value of the consideration for the transfer, or if the transfer is not for full consideration in money or money's worth, the market value of the land transferred, is small, as compared with the market value of the holding as it subsisted immediately before the transfer, and

(b) the transferor had not taken any steps by advertising or otherwise to dispose of any part of the holding or to make his willingness to dispose of it known to the authority or others.

(2) If the transferor so claims, the transfer shall not be treated for the purposes of this Act as a disposal, but all sums which, if it had been so treated, would have been brought into account as consideration for that disposal in the computation of the gain shall be deducted from any expenditure allowable under Chapter III of Part II as a deduction in computing a gain on any subsequent disposal of the holding.

[[F383](2A) A claim under subsection (2) above shall be made—

(a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the transfer is made;

(b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the transfer is made.**]**

(3) For the purposes of this section the holding of land shall comprise only the land in respect of which the expenditure allowable under paragraphs (a) and (b) of section 38(1) would be apportioned under section 42 if the transfer had been treated as a disposal (that is, as a part disposal of the holding).

(4) In this section references to a holding of land include references to an estate or interest in a holding of land, not being an estate or interest which is a wasting asset, and references to part of a holding shall be construed accordingly.

(5) In this section "authority exercising or having compulsory powers" means, in relation to the land transferred, a person or body of persons acquiring it compulsorily or who has or have been, or could be, authorised to acquire it compulsorily for the purposes for which it is acquired, or for whom another person or body of persons has or have been, or could be, authorised so to acquire it.

Textual Amendments

F383 S. 243(2A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 38**

244 Part disposal: consideration exceeding allowable expenditure.

(1) The provisions of sections 242(2) and 243(2) shall have effect subject to this section.

(2) Where the allowable expenditure is less than the consideration for the part disposal (or is nil)—

(a) the said provisions shall not apply, and

(b) if the recipient so elects (and there is any allowable expenditure)—

(i) the consideration for the part disposal shall be reduced by the amount of the allowable expenditure, and,

(ii) none of that expenditure shall be allowable as a deduction in computing a gain accruing on the occasion of the part disposal or on any subsequent occasion.

In this subsection "allowable expenditure" means expenditure which, immediately before the part disposal, was attributable to the holding of land under paragraphs (a) and (b) of section 38(1).

[F384(3) An election under subsection (2)(b) above shall be made—

(a) for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the part disposal is made;

(b) for the purposes of corporation tax, within 2 years after the end of the accounting period in which the part disposal is made.**]**

Textual Amendments

F384 S. 244(3) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 39**

Compulsory acquisition

245 Compensation paid on compulsory acquisition.

(1) Where land or an interest in or right over land is acquired and the acquisition is, or could have been, made under compulsory powers, then in considering whether, under section 52(4), the purchase price or compensation or other consideration for the acquisition should be apportioned and treated in part as a capital sum within section 22(1)(a), whether as compensation for loss of goodwill or for disturbance or otherwise, or should be apportioned in any other way, the fact that the acquisition is or could have been made compulsorily, and any statutory provision treating the purchase price or compensation or other consideration as exclusively paid in respect of the land itself, shall be disregarded.

(2) In any case where land or an interest in land is acquired as mentioned in subsection (1) above from any person and the compensation or purchase price includes an amount in respect of severance of the land comprised in the acquisition or sale from other land in which that person is entitled in the same capacity to an interest, or in respect of that other land as being injuriously affected, there shall be deemed for the purposes of this Act to be a part disposal of that other land.

246 Time of disposal and acquisition.

Where an interest in land is acquired, otherwise than under a contract, by an authority possessing compulsory purchase powers, the time at which the disposal and acquisition is made is the time at which the compensation for the acquisition is agreed or otherwise determined (variations on appeal being disregarded for this purpose) **F385** ... .

Textual Amendments

F385 Words in s. 246 repealed (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), s. 141(4), **Sch. 41 Pt. V(6)**

247 Roll-over relief on compulsory acquisition.

(1) This section applies where—

(a) land ("the old land") is disposed of by any person ("the landowner") to an authority exercising or having compulsory powers; and

(b) the landowner did not take any steps, by advertising or otherwise, to dispose of the old land or to make his willingness to dispose of it known to the authority or others; and

(c) the consideration for the disposal is applied by the landowner in acquiring other land ("the new land") not being land excluded from this paragraph by section 248.

(2) Subject to section 248, in a case where the whole of the consideration for the disposal was applied as mentioned in subsection (1)(c) above, the landowner, on making a claim as respects the consideration so applied, shall be treated for the purposes of this Act—

(a) as if the consideration for the disposal of the old land were (if otherwise of a greater amount or value) of such amount as would secure that on the disposal neither a gain nor a loss accrues to him; and

(b) as if the amount or value of the consideration for the acquisition of the new land were reduced by the excess of the amount or value of the actual consideration for the disposal of the old land over the amount of the consideration which he is treated as receiving under paragraph (a) above.

(3) If part only of the consideration for the disposal of the old land was applied as mentioned in subsection (1)(c) above, then, subject to section 248, if the part of the consideration which was not so applied ("the unexpended consideration") is less than the amount of the gain (whether all chargeable gain or not) accruing on the disposal of the old land, the landowner, on making a claim as respects the consideration which was so applied, shall be treated for the purposes of this Act—

(a) as if the amount of the gain so accruing were reduced to the amount of the unexpended consideration (and, if not all chargeable gain, with a proportionate reduction in the amount of the chargeable gain); and

(b) as if the amount or value of the consideration for the acquisition of the new land were reduced by the amount by which the gain is reduced (or, as the case may be, the amount by which the chargeable gain is proportionately reduced) under paragraph (a) above.

(4) Nothing in subsection (2) or subsection (3) above affects the treatment for the purposes of this Act of the authority by whom the old land was acquired or of the other party to the transaction involving the acquisition of the new land.

(5) For the purposes of this section—

(a) subsection (2) of section 152 shall apply in relation to subsection (2)(a) and subsection (2)(b) above as it applies in relation to subsection (1)(a) and subsection (1)(b) of that section; and

(b) **[**F386subsections (3) and (4)**]** of that section shall apply as if any reference to the new assets were a reference to the new land, any reference to the old assets were a reference to the old land and any reference to that section were a reference to this.

[F387(5A) Subsections (2A) and (2C) of section 175 shall apply in relation to this section as they apply in relation to section 152 (but as if the reference in subsection (2C) to the new assets were a reference to the new land).**]**

(6) Where this section applies, any such amount as is referred to in subsection (2) of section 245 shall be treated as forming part of the consideration for the disposal of the old land and, accordingly, so much of that subsection as provides for a deemed disposal of other land shall not apply.

(7) The provisions of this Act fixing the amount of the consideration deemed to be given for the acquisition or disposal of assets shall be applied before this section is applied.

(8) In this section—

"land" includes any interest in or right over land; and

"authority exercising or having compulsory powers" shall be construed in accordance with section 243(5).

Textual Amendments

F386 Words in s. 247(5)(b) substituted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(5)**

F387 S. 247(5A) inserted (with application in accordance with s. 48(6) of the amending Act) by Finance Act 1995 (c. 4), **s. 48(2)**

[F388**247A Provisional application of section 247.**

(1) This section applies where a person who disposes of land ("the old land") to an authority exercising or having compulsory powers declares, in his return for the chargeable period in which the disposal takes place—

(a) that the whole or any specified part of the consideration for the disposal will be applied in the acquisition of other land ("the new land");

(b) that the acquisition will take place as mentioned in subsection (3) of section 152; and

(c) that the new land will not be land excluded from section 247(1)(c) by section 248.

(2) Until the declaration ceases to have effect, section 247 shall apply as if the acquisition had taken place and the person had made a claim under that section.

(3) For the purposes of this section, subsections (3) to (5) of section 153A shall apply as if the reference to section 152 or 153 were a reference to section 247 and the reference to the old assets were a reference to the old land.

(4) In this section "land" and "authority exercising or having compulsory powers" have the same meaning as in section 247.**]**

Textual Amendments

F388 S. 247A inserted (with effect in accordance with s. 121(8) of the amending Act) by Finance Act 1996 (c. 8), **s. 141(6)**

248 Provisions supplementary to section 247.

(1) Land is excluded from paragraph (c) of subsection (1) of section 247 if—

(a) it is a dwelling-house or part of a dwelling-house (or an interest in or right over a dwelling-house), and

(b) by virtue of, or of any claim under, any provision of sections 222 to 226 the whole or any part of a gain accruing on a disposal of it by the landowner at a material time would not be a chargeable gain;

and for the purposes of this subsection "a material time" means any time during the period of 6 years beginning on the date of the acquisition referred to in the said paragraph (c).

(2) If, at any time during the period of 6 years referred to in subsection (1) above, land which at the beginning of that period was not excluded from section 247(1)(c) by virtue of that subsection becomes so excluded, the amount of any chargeable gain accruing on the disposal of the old land shall be redetermined without regard to any relief previously given under section 247 by reference to the amount or value of the consideration for the acquisition of that land; and all such adjustments of capital gains tax, whether by way of assessment or otherwise, may be made at any time, notwithstanding anything in section 34 of the Management Act (time limit for assessments).

This subsection also applies where the period of 6 years referred to above began before the commencement of this section (and accordingly the references to section 247 include references to section 111A of the 1979 Act).

(3) Where the new land is a depreciating asset, within the meaning of section 154, that section has effect as if—

(a) any reference in subsection (1) or subsection (4) to section 152 or 153 were a reference to subsection (2) or subsection (3) respectively of section 247; and

(b) paragraph (b) of subsection (2) were omitted; and

(c) the reference in subsection (5) to section 152(3) were a reference to that provision as applied by section 247(5).

(4) No claim may be made under section 243 in relation to a transfer which constitutes a disposal in respect of which a claim is made under section 247.

(5) Expressions used in this section have the same meaning as in section 247.

Agricultural land and woodlands

249 Grants for giving up agricultural land.

For the purposes of capital gains tax, a sum payable to an individual by virtue of a scheme under section 27 of the [M81]Agriculture Act 1967 (grants for relinquishing occupation of uncommercial agricultural units) shall not be treated as part of the consideration obtained by him for, or otherwise as accruing to him on, the disposal of any asset.

Marginal Citations
M81 1967 c. 22.

250 Woodlands.

(1) Consideration for the disposal of trees standing or felled or cut on woodlands managed by the occupier on a commercial basis and with a view to the realisation of profits shall be excluded from the computation of the gain if the person making the disposal is the occupier.

(2) Capital sums received under a policy of insurance in respect of the destruction of or damage or injury to trees by fire or other hazard on such woodlands shall be excluded from the computation of the gain if the person making the disposal is the occupier.

(3) Subsection (2) above has effect notwithstanding section 22(1).

(4) In the computation of the gain so much of the cost of woodland in the United Kingdom shall be disregarded as is attributable to trees growing on the land.

(5) In the computation of the gain accruing on a disposal of woodland in the United Kingdom so much of the consideration for the disposal as is attributable to trees growing on the land shall be excluded.

(6) References in this section to trees include references to saleable underwood.

Debts

251 General provisions.

(1) Where a person incurs a debt to another, whether in sterling or in some other currency, no chargeable gain shall accrue to that (that is the original) creditor or his personal representative or legatee on a disposal of the debt, except in the case of the debt on a security (as defined in section 132).

(2) Subject to the provisions of sections 132 and 135 and subject to subsection (1) above, the satisfaction of a debt or part of it (including a debt on a security as defined in section 132) shall be treated as a disposal of the debt or of that part by the creditor made at the time when the debt or that part is satisfied.

(3) Where property is acquired by a creditor in satisfaction of his debt or part of it, then subject to the provisions of sections 132 and 135 the property shall not be treated as disposed of by the debtor or acquired by the creditor for a consideration greater than its market value at the time of the creditor's acquisition of it; but if under subsection (1) above (and in a case not falling within either section 132 or 135) no chargeable gain is to accrue on a disposal of the debt by the creditor (that is the original creditor), and a chargeable gain accrues to him on a disposal by him of the property, the amount of the chargeable gain shall (where necessary) be reduced so as not to exceed the chargeable gain which would have accrued if he had acquired the property for a consideration equal to the amount of the debt or that part of it.

(4) A loss accruing on the disposal of a debt acquired by the person making the disposal from the original creditor or his personal representative or legatee at a time when the creditor or his personal representative or legatee is a person connected with the person making the disposal, and so acquired either directly or by one or more purchases through persons all of whom are connected with the person making the disposal, shall not be an allowable loss.

(5) Where the original creditor is a trustee and the debt, when created, is settled property, subsections (1) and (4) above shall apply as if for the references to the original creditor's personal representative or legatee there were substituted references to any person becoming absolutely entitled, as against the trustee, to the debt on its ceasing to be settled property, and to that person's personal representative or legatee.

[[F389](6) For the purposes of this section a debenture issued by any company on or after 16th March 1993 shall be deemed to be a security (as defined in section 132) if—

(a) it is issued on a reorganisation (as defined in section 126(1)) or in pursuance of its allotment on any such reorganisation;

(b) it is issued in exchange for shares in or debentures of another company and in a case unaffected by section 137 where one or more of the conditions mentioned in paragraphs (a) to (c) of section 135(1) is satisfied in relation to the exchange;

(c) it is issued under any such arrangements as are mentioned in subsection (1)(a) of section 136 and in a case unaffected by section 137 where section 136 requires shares or debentures in another company to be treated as exchanged for, or for anything that includes, that debenture; or

(d) it is issued in pursuance of rights attached to any debenture issued on or after 16th March 1993 and falling within paragraph (a), (b) or (c) above

[[F390]and any debenture which results from a conversion of securities within the meaning of section 132, or is issued in pursuance of rights attached to such a debenture, shall be deemed for the purposes of this section to be a security (as defined in that section).**]]**

[[F391](7) Where any instrument specified in subsection (8) below is not a security (as defined in section 132), that instrument shall be deemed to be such a security for the purposes of this section, other than the purposes of determining what is or is not an allowable loss in any case.

(8) The instruments mentioned in subsection (7) above are—

(a) any instrument that would fall to be treated for the purposes of this Act as an asset representing a loan relationship of a company if the provisions of sections 92(4) and 93(4) of the Finance Act 1996 (convertible securities and assets linked to the value of chargeable assets) were disregarded; or

(b) any instrument which (even apart from those provisions) is not a loan relationship of a company but which would be a relevant discounted security for the purposes of Schedule 13 to that Act if paragraph 3(2)(c) of that Schedule (excluded indexed securities) were omitted.**]**

Textual Amendments

F389 S. 251(6) inserted (27.7.1993 with effect as mentioned in s. 84(3)) by 1993 c. 34, **s. 84(2)(3)**

F390 Words in s. 251(6) inserted (with effect in accordance with s. 88(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 88(5)**

F391 S. 251(7)(8) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 64** (with Sch. 15)

Modifications etc. (not altering text)

C174 S. 251(8) modified (27.7.1999) by Finance Act 1999 (c. 16), **s. 65(11)**

252 Foreign currency bank accounts.

(1) Subject to subsection (2) below, section 251(1) shall not apply to a debt owed by a bank which is not in sterling and which is represented by a sum standing to the credit of a person in an account in the bank.

(2) Subsection (1) above shall not apply to a sum in an individual's bank account representing currency acquired by the holder for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

253 Relief for loans to traders.

(1) In this section "a qualifying loan" means a loan in the case of which—

(a) the money lent is used by the borrower wholly for the purposes of a trade carried on by him, not being a trade which consists of or includes the lending of money, and

(b) the borrower is resident in the United Kingdom, and

(c) the borrower's debt is not a debt on a security as defined in section 132;

and for the purposes of paragraph (a) above money used by the borrower for setting up a trade which is subsequently carried on by him shall be treated as used for the purposes of that trade.

(2) In subsection (1) above references to a trade include references to a profession or vocation; and where money lent to a company is lent by it to another company in the same group, being a trading company, that subsection shall apply to the money lent to the first-mentioned company as if it had used it for any purpose for which it is used by the other company while a member of the group.

(3) **[**[F392]Where a person who has made a qualifying loan makes a claim and at that time**]**—

(a) any outstanding amount of the principal of the loan has become irrecoverable, and

(b) the claimant has not assigned his right to recover that amount, and

(c) the claimant and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time,

[F393then, to the extent that that amount is not an amount which, in the case of the claimant, falls to be brought into account as a debit given for the purposes of Chapter II of Part IV of the Finance Act 1996 (loan relationships),**]** this Act shall have effect as if an allowable loss equal to that amount had accrued to the claimant **[**F394at the time of the claim or (subject to subsection (3A) below) any earlier time specified in the claim**]**.

[F395(3A) For the purposes of subsection (3) above, an earlier time may be specified in the claim if:

(a) the amount to which that subsection applies was also irrecoverable at the earlier time; and either

(b) for capital gains tax purposes the earlier time falls not more than two years before the beginning of the year of assessment in which the claim is made; or

(c) for corporation tax purposes the earlier time falls on or after the first day of the earliest accounting period ending not more than two years before the time of the claim.**]**

(4) **[**F396Where a person who has guaranteed the repayment of a loan which is, or but for subsection (1)(c) above would be, a qualifying loan makes a claim and at that time**]**—

(a) any outstanding amount of, or of interest in respect of, the principal of the loan has become irrecoverable from the borrower, and

(b) the claimant has made a payment under the guarantee (whether to the lender or a co-guarantor) in respect of that amount, and

(c) the claimant has not assigned any right to recover that amount which has accrued to him (whether by operation of law or otherwise) in consequence of his having made the payment, and

(d) the lender and the borrower were not each other's spouses, or companies in the same group, when the loan was made or at any subsequent time and the claimant and the borrower were not each other's spouses, and the claimant and the lender were not companies in the same group, when the guarantee was given or at any subsequent time,

this Act shall have effect as if an allowable loss had accrued to the claimant when the payment was made; and the loss shall be equal to the payment made by him in respect of the amount mentioned in paragraph (a) above less any contribution payable to him by any co-guarantor in respect of the payment so made.

[F397(4A) A claim under subsection (4) above shall be made—

(a) for the purposes of capital gains tax, on or before the fifth anniversary of the 31st January next following the year of assessment in which the payment was made;

(b) for the purposes of corporation tax, within 6 years after the end of the accounting period in which the payment was made.**]**

(5) Where an allowable loss has been treated under subsection (3) or (4) above as accruing to any person and the whole or any part of the outstanding amount mentioned in subsection (3)(a) or, as the case may be, subsection (4)(a) is at any time recovered by him, this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(6) Where—

(a) an allowable loss has been treated under subsection (4) above as accruing to any person, and

(b) the whole or any part of the amount of the payment mentioned in subsection (4)(b) is at any time recovered by him,

this Act shall have effect as if there had accrued to him at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(7) Where—

(a) an allowable loss has been treated under subsection (3) above as accruing to a company ("the first company"), and

(b) the whole or any part of the outstanding amount mentioned in subsection (3)(a) is at any time recovered by a company ("the second company") in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(8) Where—

(a) an allowable loss has been treated under subsection (4) above as accruing to a company ("the first company"), and

(b) the whole or any part of the outstanding amount mentioned in subsection (4)(a), or the whole or any part of the amount of the payment mentioned in subsection (4)(b), is at any time recovered by a company ("the second company") in the same group as the first company,

this Act shall have effect as if there had accrued to the second company at that time a chargeable gain equal to so much of the allowable loss as corresponds to the amount recovered.

(9) For the purposes of subsections (5) to (8) above, a person shall be treated as recovering an amount if he (or any other person by his direction) receives any money or money's worth in satisfaction of his right to recover that amount or in consideration of his assignment of the right to recover it; and where a person assigns such a right otherwise than by way of a bargain made at arm's length he shall be treated as receiving money or money's worth equal to the market value of the right at the time of the assignment.

(10) No amount shall be treated under this section as giving rise to an allowable loss or chargeable gain in the case of any person if it falls to be taken into account in computing his income for the purposes of income tax or corporation tax.

(11) Where an allowable loss has been treated as accruing to a person under subsection (4) above by virtue of a payment made by him at any time under a guarantee—

(a) no chargeable gain shall accrue to him otherwise than under subsection (5) above, and

(b) no allowable loss shall accrue to him under this Act,

on his disposal of any rights that have accrued to him (whether by operation of law or otherwise) in consequence of his having made any payment under the guarantee at or after that time.

(12) References in this section to an amount having become irrecoverable do not include references to cases where the amount has become irrecoverable in consequence of the

terms of the loan, of any arrangements of which the loan forms part, or of any act or omission by the lender or, in a case within subsection (4) above, the guarantor.

(13) For the purposes of subsections (7) and (8) above, 2 companies are in the same group if they were in the same group when the loan was made or have been in the same group at any subsequent time.

(14) In this section—

(a) "spouses" means spouses who are living together (construed in accordance with section 288(3)),

(b) "trading company" has the meaning given by **[**F398paragraph 22 of Schedule A1**]**, and

(c) "group" shall be construed in accordance with section 170.

(15) Subsection (3) above does not apply where the loan was made before 12th April 1978 and subsection (4) above does not apply where the guarantee was given before that date.

Textual Amendments

F392 Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 8(2)(a)**

F393 Words in s. 253(3) inserted (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 14 para. 65** (with Sch. 15)

F394 Words in s. 253(3) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 8(2)(b)**

F395 S. 253(3A) inserted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 8(3)**

F396 Words in s. 253(4) substituted (with effect in accordance with Sch. 39 para. 8(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 39 para. 8(4)**

F397 S. 253(4A) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 40**

F398 Words in s. 253(14)(b) substituted (with effect in relation to the year 2003-04 and subsequent years of assessment in accordance with s. 140(6) of the amending Act) by Finance Act 1998 (c. 36), **s. 140(5)(b)**

Modifications etc. (not altering text)

C175 Ss. 253, 254 modified (11.1.1994 retrospective) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 9(3)**(4)**

C176 Ss. 253, 254 restricted (11.1.1994 retrospective) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 9(5)**

C177 Ss. 253, 254 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), Sch. 4 para. 9(2)**(3)** (with Sch. 4 para. 9(3)(5), 14); S.I. 1994/2189, art. 2, Sch.

C178 S. 253(4) modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), Sch. 24 para. 9(2)**(5)**

C179 S. 253(4) modified (8.11.1995) by Atomic Energy Authority Act 1995 (c. 37), **Sch. 3 para. 6(2)**

C180 S. 253(7)(8) excluded (11.1.1994 retrospective) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 9(9)**

C181 S. 253(9) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 9(5)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C182 S. 253(10) modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 9(6)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C183 S. 253(13) applied (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 9(7)** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

F399 254 Relief for debts on qualifying corporate bonds.

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Textual Amendments

F399 Ss. 254, 255 repealed (with effect in accordance with s. 141(2)(b) of the amending Act) by Finance Act 1998 (c. 36), s. 141(1)(b), **Sch. 27 Pt. III(32)**

F399 255 Provisions supplementary to section 254.

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Textual Amendments

F399 Ss. 254, 255 repealed (with effect in accordance with s. 141(2)(b) of the amending Act) by Finance Act 1998 (c. 36), s. 141(1)(b), **Sch. 27 Pt. III(32)**

Charities and gifts of non-business assets etc.

256 Charities.

(1) Subject to section 505(3) of the Taxes Act and subsection (2) below, a gain shall not be a chargeable gain if it accrues to a charity and is applicable and applied for charitable purposes.

(2) If property held on charitable trusts ceases to be subject to charitable trusts—

(a) the trustees shall be treated as if they had disposed of, and immediately reacquired, the property for a consideration equal to its market value, any gain on the disposal being treated as not accruing to a charity, and

(b) if and so far as any of that property represents, directly or indirectly, the consideration for the disposal of assets by the trustees, any gain accruing on that disposal shall be treated as not having accrued to a charity,

and an assessment to capital gains tax chargeable by virtue of paragraph (b) above may be made at any time not more than 3 years after the end of the year of assessment in which the property ceases to be subject to charitable trusts.

257 Gifts to charities etc.

(1) Subsection (2) below shall apply where a disposal of an asset is made otherwise than under a bargain at arm's length—

(a) to a charity, or

(b) to any bodies mentioned in Schedule 3 to the M82Inheritance Tax Act 1984 (gifts for national purposes, etc)

[F400and the disposal is not one in relation to which section 151A(1) has effect.**]**

(2) Sections 17(1) and 258(3) shall not apply; but if the disposal is by way of gift (including a gift in settlement) or for a consideration not exceeding the sums allowable as a deduction under section 38, then—

(a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

(b) where, after the disposal, the asset is disposed of by the person who acquired it under the disposal, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the person making the later disposal.

(3) Where—

(a) otherwise than on the termination of a life interest (within the meaning of section 72) by the death of the person entitled thereto, any assets or parts of any assets forming part of settled property are, under section 71, deemed to be disposed of and reacquired by the trustee, and

(b) the person becoming entitled as mentioned in section 71(1) is a charity, or a body mentioned in Schedule 3 to the Inheritance Tax Act 1984 (gifts for national purposes, etc),

then, if no consideration is received by any person for or in connection with any transaction by virtue of which the charity or other body becomes so entitled, the disposal and reacquisition of the assets to which the charity or other body becomes so entitled shall, notwithstanding section 71, be treated for the purposes of this Act as made for such consideration as to secure that neither a gain nor a loss accrues on the disposal.

(4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146(2) of the 1979 Act applied where the person who acquired the asset on that disposal disposes of the asset after the coming into force of this section.

Textual Amendments

F400 Words in s. 257(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 72(5)**

Marginal Citations

M82 1984 c. 51.

258 Works of art etc.

F401(1) . . . . . .

(2) A gain shall not be a chargeable gain if it accrues on the disposal of an asset with respect to which an inheritance tax undertaking or an undertaking under the following provisions of this section has been given and—

(a) the disposal is by way of sale by private treaty to a body mentioned in Schedule 3 to the **[**F402Inheritance Tax Act 1984 ("the 1984 Act")**]** (museums, etc.), or is to such a body otherwise than by sale, or

(b) the disposal is to the Board in pursuance of section 230 of the 1984 Act or in accordance with directions given by the Treasury under section 50 or 51 of the M83Finance Act 1946 (acceptance of property in satisfaction of tax).

(3) Subsection (4) below shall have effect in respect of the disposal of any asset which is property which has been or could be designated under section 31 of the 1984 Act, being—

(a) a disposal by way of gift, including a gift in settlement, or

(b) a disposal of settled property by the trustee on an occasion when, under section 71(1), the trustee is deemed to dispose of and immediately reacquire settled property (other than any disposal on which by virtue of section 73 no chargeable gain or allowable loss accrues to the trustee),

if the requisite undertaking described in section 31 of the 1984 Act (maintenance, preservation and access) is given by such person as the Board think appropriate in the circumstances of the case.

(4) The person making a disposal to which subsection (3) above applies and the person acquiring the asset on the disposal shall be treated for all the purposes of this Act as if the asset was acquired from the one making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss would accrue to the one making the disposal.

(5) If—

(a) there is a sale of the asset and inheritance tax is chargeable under section 32 of the 1984 Act (or would be chargeable if an inheritance tax undertaking as well as an undertaking under this section had been given), or

(b) the Board are satisfied that at any time during the period for which any such undertaking was given it has not been observed in a material respect,

the person selling that asset or, as the case may be, the owner of the asset shall be treated for the purposes of this Act as having sold the asset for a consideration equal to its market value, and, in the case of a failure to comply with the undertaking, having immediately reacquired it for a consideration equal to its market value.

(6) The period for which an undertaking under this section is given shall be until the person beneficially entitled to the asset dies or it is disposed of, whether by sale or gift or otherwise; and if the asset subject to the undertaking is disposed of—

(a) otherwise than on sale, and

(b) without a further undertaking being given under this section,

subsection (5) above shall apply as if the asset had been sold to an individual.

References in this subsection to a disposal shall be construed without regard to any provision of this Act under which an asset is deemed to be disposed of.

(7) Where under subsection (5) above a person is treated as having sold for a consideration equal to its market value any asset within section 31(1)(c), (d) or (e) of the 1984 Act, he shall also be treated as having sold and immediately reacquired for a consideration equal to its market value any asset associated with it; but the Board may direct that the preceding provisions of this subsection shall not have effect in any case in which it appears to them that the entity consisting of the asset and any assets associated with it has not been materially affected.

For the purposes of this subsection 2 or more assets are associated with each other if one of them is a building falling within section 31(1)(c) of the 1984 Act and the other or others such land or objects as, in relation to that building, fall within section 31(1)(d) or (e) of the 1984 Act.

(8) If in pursuance of subsection (5) above a person is treated as having on any occasion sold an asset and inheritance tax becomes chargeable on the same occasion, then, in determining the value of the asset for the purposes of that tax, an allowance shall be made for the capital gains tax chargeable on any chargeable gain accruing on that occasion.

[F403(8A) Section 35A of the 1984 Act (variation of undertakings) shall have effect in relation to an undertaking given under this section as it has effect in relation to an undertaking given under section 30 of that Act.**]**

(9) In this section "inheritance tax undertaking" means an undertaking under Chapter II of Part II or section 78 of, or Schedule 5 to, the 1984 Act.

Textual Amendments

F401 S. 258(1) repealed (with effect in accordance with Sch. 27 Pt. IV of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. IV**

F402 Words in s. 258(2)(a) substituted (with effect in accordance with s. 143(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 143(7)**

F403 S. 258(8A) inserted (with effect in accordance with Sch. 25 para. 9(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 25 para. 9(1)**

Marginal Citations

M83 1946 c. 64.

259 Gifts to housing associations.

(1) Subsection (2) below shall apply where—

(a) a disposal of an estate or interest in land in the United Kingdom is made to a **[**F404relevant**]** housing association otherwise than under a bargain at arm's length, and

(b) a claim for relief under this section is made by the transferor and the association.

(2) Section 17(1) shall not apply; but if the disposal is by way of gift or for a consideration not exceeding the sums allowable as a deduction under section 38, then—

(a) the disposal and acquisition shall be treated for the purposes of this Act as being made for such consideration as to secure that neither a gain nor a loss accrues on the disposal, and

(b) where, after the disposal, the estate or interest is disposed of by the association, its acquisition by the person making the earlier disposal shall be treated for the purposes of this Act as the acquisition of the association.

[F405(3) In this section "relevant housing association" means—

(a) a registered social landlord within the meaning of Part I of the Housing Act 1996,

(b) a registered housing association within the meaning of the Housing Associations Act 1985 (Scottish registered housing associations), or

(c) a registered housing association within the meaning of Part II of the Housing (Northern Ireland) Order 1992.**]**

(4) In subsection (2)(b) above the first reference to a disposal includes a disposal to which section 146A(2) of the 1979 Act applied where the association which acquired the estate or interest in land on that disposal disposes of it after the coming into force of this section.

Textual Amendments

F404 Word in s. 259(1)(a) substituted (1.10.1996) by The Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325), art. 1(2), **Sch. 2 para. 20(3)(a)**

F405 S. 259(3) substituted (1.10.1996) by The Housing Act 1996 (Consequential Provisions) Order 1996 (S.I. 1996/2325), art. 1(2), **Sch. 2 para. 20(3)(b)**

260 Gifts on which inheritance tax is chargeable etc.

(1) If—

(a) an individual or the trustees of a settlement ("the transferor") make a disposal within subsection (2) below of an asset,

(b) the asset is acquired by an individual or the trustees of a settlement ("the transferee"), and

(c) a claim for relief under this section is made by the transferor and the transferee or, where the trustees of a settlement are the transferee, by the transferor alone,

then, subject to subsection (6) below and section 261, subsection (3) below shall apply in relation to the disposal.

(2) A disposal is within this subsection if it is made otherwise than under a bargain at arm's length and—

(a) is a chargeable transfer within the meaning of the [M84]Inheritance Tax Act 1984 (or would be but for section 19 of that Act) and is not a potentially exempt transfer (within the meaning of that Act),

(b) is an exempt transfer by virtue of—

(i) section 24 of that Act (transfers to political parties),

[F406](ii) . . . . . .

(iii) section 27 of that Act (transfers to maintenance funds for historic buildings etc.), or

(iv) section 30 of that Act (transfers of designated property),

(c) is a disposition to which section 57A of that Act applies and by which the property disposed of becomes held on trusts of the kind referred to in subsection (1)(b) of that section (maintenance funds for historic buildings etc.),

(d) by virtue of subsection (4) of section 71 of that Act (accumulation and maintenance trusts) does not constitute an occasion on which inheritance tax is chargeable under that section,

(e) by virtue of section 78(1) of that Act (transfers of works of art etc.) does not constitute an occasion on which tax is chargeable under Chapter III of Part III of that Act, or

(f) is a disposal of an asset comprised in a settlement where, as a result of the asset or part of it becoming comprised in another settlement, there is no charge, or a reduced charge, to inheritance tax by virtue of paragraph 9, 16 or 17 of

Schedule 4 to that Act (transfers to maintenance funds for historic buildings etc.).

(3) Where this subsection applies in relation to a disposal—

(a) the amount of any chargeable gain which, apart from this section, would accrue to the transferor on the disposal, and

(b) the amount of the consideration for which, apart from this section, the transferee would be regarded for the purposes of capital gains tax as having acquired the asset in question,

shall each be reduced by an amount equal to the held-over gain on the disposal.

(4) Subject to subsection (5) below, the reference in subsection (3) above to the held-over gain on a disposal is a reference to the chargeable gain which would have accrued on that disposal apart from this section.

(5) In any case where—

(a) there is actual consideration (as opposed to the consideration equal to the market value which is deemed to be given by virtue of any provision of this Act) for a disposal in respect of which a claim for relief is made under this section, and

(b) that actual consideration exceeds the sums allowable as a deduction under section 38,

the held-over gain on the disposal shall be reduced by the excess referred to in paragraph (b) above [F407]... .

(6) Subsection (3) above does not apply in relation to a disposal of assets within section 115(1) on which a gain is deemed to accrue by virtue of section 116(10)(b).

[[F408](6A) Subsection (3) above does not apply, so far as any gain accruing in accordance with paragraphs 4 and 5 of Schedule 5B is concerned, in relation to the disposal which constitutes the chargeable event by virtue of which that gain accrues.**]**

[[F409](6B) Subsection (3) above does not apply, so far as any gain accruing in accordance with paragraphs 4 and 5 of Schedule 5C is concerned, in relation to the disposal which constitutes the chargeable event by virtue of which that gain accrues.**]**

(7) In the case of a disposal within subsection (2)(a) above there shall be allowed as a deduction in computing the chargeable gain accruing to the transferee on the disposal of the asset in question an amount equal to whichever is the lesser of—

(a) the inheritance tax attributable to the value of the asset; and

(b) the amount of the chargeable gain as computed apart from this subsection.

(8) Where an amount of inheritance tax is varied after it has been taken into account under subsection (7) above, all necessary adjustments shall be made, whether by the making of an assessment to capital gains tax or by the discharge or repayment of such tax.

(9) Where subsection (3) above applies in relation to a disposal which is deemed to occur by virtue of section 71(1) or 72(1), subsection (5) above shall not apply.

(10) Where a disposal is partly within subsection (2) above, or is a disposal within paragraph (f) of that subsection on which there is a reduced charge such as is mentioned in that paragraph, the preceding provisions of this section shall have effect in relation to an appropriate part of the disposal.

Textual Amendments

F406 S. 260(2)(b)(ii) repealed (with effect in accordance with Sch. 27 Pt. IV of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. IV**

F407 Words in s. 260(5) repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

F408 S. 260(6A) inserted (with effect in accordance with Sch. 13 para. 4(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 13 para. 4(2)**

F409 S. 260(6B) inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 72(6)**

Marginal Citations

M84 1984 c. 51.

261 Section 260 relief: gifts to non-residents.

(1) Section 260(3) shall not apply where the transferee is neither resident nor ordinarily resident in the United Kingdom.

(2) Section 260(3) shall not apply where the transferee is an individual who—

(a) though resident or ordinarily resident in the United Kingdom, is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) by virtue of the arrangements would not be liable in the United Kingdom to tax on a gain arising on a disposal of the asset occurring immediately after its acquisition.

Miscellaneous reliefs and exemptions

262 Chattel exemption.

(1) Subject to this section a gain accruing on a disposal of an asset which is tangible movable property shall not be a chargeable gain if the amount or value of the consideration for the disposal does not exceed £6,000.

(2) Where the amount or value of the consideration for the disposal of an asset which is tangible movable property exceeds £6,000, there shall be excluded from any chargeable gain accruing on the disposal so much of it as exceeds five-thirds of the difference between—

(a) the amount or value of the consideration, and

(b) £6,000.

(3) Subsections (1) and (2) above shall not affect the amount of an allowable loss accruing on the disposal of an asset, but for the purposes of computing under this Act the amount of a loss accruing on the disposal of tangible movable property the consideration for the disposal shall, if less than £6,000, be deemed to be £6,000 and the losses which are allowable losses shall be restricted accordingly.

(4) If 2 or more assets which have formed part of a set of articles of any description all owned at one time by one person are disposed of by that person, and—

(a) to the same person, or

(b) to persons who are acting in concert or who are connected persons,

whether on the same or different occasions, the 2 or more transactions shall be treated as a single transaction disposing of a single asset, but with any necessary apportionments of the reductions in chargeable gains, and in allowable losses, under subsections (2) and (3) above.

(5) If the disposal is of a right or interest in or over tangible movable property—

(a) in the first instance subsections (1), (2) and (3) above shall be applied in relation to the asset as a whole, taking the consideration as including the market value of what remains undisposed of, in addition to the actual consideration,

(b) where the sum of the actual consideration and that market value exceeds £6,000, the part of any chargeable gain that is excluded from it under subsection (2) above shall be so much of the gain as exceeds five-thirds of the difference between that sum and £6,000 multiplied by the fraction equal to the actual consideration divided by the said sum, and

(c) where that sum is less than £6,000 any loss shall be restricted under subsection (3) above by deeming the consideration to be the actual consideration plus the said fraction of the difference between the said sum and £6,000.

(6) This section shall not apply—

(a) in relation to a disposal of commodities of any description by a person dealing on a terminal market or dealing with or through a person ordinarily engaged in dealing on a terminal market, or

(b) in relation to a disposal of currency of any description.

263 Passenger vehicles.

A mechanically propelled road vehicle constructed or adapted for the carriage of passengers, except for a vehicle of a type not commonly used as a private vehicle and unsuitable to be so used, shall not be a chargeable asset; and accordingly no chargeable gain or allowable loss shall accrue on its disposal.

[F410 263A Agreements for sale and repurchase of securities.

(1) Subject to subsections (2) to (4) below, in any case falling within subsection (1) of section 730A of the Taxes Act (treatment of price differential on sale and repurchase of securities) and in any case which would fall within that subsection if the sale price and the repurchase price were different—

(a) the acquisition of the securities in question by the interim holder and the disposal of those securities by him to the repurchaser, and

(b) except where the repurchaser is or may be different from the original owner, the disposal of those securities by the original owner and any acquisition of those securities by the original owner as the repurchaser,

shall be disregarded for the purposes of capital gains tax.

(2) Subsection (1) above does not apply in any case where the repurchase price of the securities in question falls to be calculated for the purposes of section 730A of the

Taxes Act by reference to provisions of section 737C of that Act that are not in force in relation to those securities when the repurchase price becomes due.

(3) Subsection (1) above does not apply if—

(a) the agreement or agreements under which provision is made for the sale and repurchase are not such as would be entered into by persons dealing with each other at arm's length; or

(b) any of the benefits or risks arising from fluctuations, before the repurchase takes place, in the market value of the securities sold accrues to, or falls on, the interim holder.

(4) Subsection (1) above does not apply in relation to any disposal or acquisition of qualifying corporate bonds in a case where the securities disposed of by the original owner or those acquired by him, or by any other person, as the repurchaser are not such bonds.

(5) Expressions used in this section and in section 730A of the Taxes Act have the same meanings in this section.**]**

Textual Amendments

F410 S. 263A inserted (with effect in accordance with s. 80(5) of the amending Act) by Finance Act 1995 (c. 4), **s. 80(4)**

Modifications etc. (not altering text)

C184 S. 263A applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), regs. 1, **5**

C185 S. 263A(1) applied (with modifications) (2.1.1996) by The Sale and Repurchase of Securities (Modification of Enactments) Regulations 1995 (S.I. 1995/3220), regs. 1, **4**

C186 S. 263A(1) modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), regs. 1, **14-18**

[F411 263B Stock lending arrangements.

(1) In this section "stock lending arrangement" means so much of any arrangements between two persons ("the borrower" and "the lender") as are arrangements under which—

(a) the lender transfers securities to the borrower otherwise than by way of sale; and

(b) a requirement is imposed on the borrower to transfer those securities back to the lender otherwise than by way of sale.

(2) Subject to the following provisions of this section and section 263C(2), the disposals and acquisitions made in pursuance of any stock lending arrangement shall be disregarded for the purposes of capital gains tax.

(3) Where—

(a) the borrower under any stock lending arrangement disposes of any securities transferred to him under the arrangement,

(b) that disposal is made otherwise than in the discharge of the requirement for the transfer of securities back to the lender, and

(c) that requirement, so far as it relates to the securities disposed of, has been or will be discharged by the transfer of securities other than those transferred to the borrower,

any question relating to the acquisition of the securities disposed of shall be determined (without prejudice to the provisions of Chapter I of Part IV) as if the securities disposed of were the securities with which that requirement (so far as relating to the securities disposed of) has been or will be discharged.

(4) Where, in the case of any stock lending arrangement, it becomes apparent, at any time after the making of the transfer by the lender, that the requirement for the borrower to make a transfer back to the lender will not be complied with—

(a) the lender shall be deemed for the purposes of this Act to have made a disposal at that time of the securities transferred to the borrower;

(b) the borrower shall be deemed to have acquired them at that time; and

(c) subsection (3) above shall have effect in relation to any disposal before that time by the borrower of securities transferred to him by the lender as if the securities deemed to have been acquired by the borrower in accordance with paragraph (b) above were to be used for discharging a requirement to transfer securities back to the lender.

(5) References in this section, in relation to a person to whom securities are transferred, to the transfer of those securities back to another person shall be construed as if the cases where those securities are taken to be transferred back to that other person included any case where securities of the same description as those securities are transferred to that other person either—

(a) in accordance with a requirement to transfer securities of the same description; or

(b) in exercise of a power to substitute securities of the same description for the securities that are required to be transferred back.

(6) For the purposes of this section securities shall not be taken to be of the same description as other securities unless they are in the same quantities, give the same rights against the same persons and are of the same type and nominal value as the other securities.

(7) In this section—

"interest" includes dividends; and

"securities" means United Kingdom equities, United Kingdom securities or overseas securities (within the meaning, in each case, of Schedule 23A to the Taxes Act).

Textual Amendments

F411 Ss. 263B, 263C inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 5(1)**; S.I. 1997/991, art. 2

Modifications etc. (not altering text)

C187 S. 263B modified (1.1.1999) by The European Single Currency (Taxes) Regulations 1998 (S.I. 1998/3177), regs. 1, **22(2)**

263C Stock lending involving redemption.

(1) In section 263B references to the transfer back to a person of securities transferred by him shall be taken to include references to the payment to him, in pursuance of an obligation arising on any person's becoming entitled to receive an amount in respect of the redemption of those securities, of an amount equal to the amount of the entitlement.

(2) Where, in pursuance of any such obligation, the lender under any stock lending arrangement is paid any amount in respect of the redemption of any securities to which the arrangement relates—

(a) that lender shall be deemed for the purposes of this Act to have disposed, for that amount, of the securities in respect of whose redemption it is paid ("the relevant lent securities");

(b) the borrower shall not, in respect of the redemption, be taken for the purposes of this Act to have made any disposal of the relevant lent securities; and

(c) section 263B(3) shall have effect in relation to disposals of any of the relevant lent securities made by the borrower before the redemption as if—

(i) the amount paid to the lender were an amount paid for the acquisition of securities, and

(ii) the securities acquired were to be used by the borrower for discharging a requirement under the arrangement to transfer the relevant lent securities back to the lender.

(3) Expressions used in this section and section 263B have the same meanings in this section as in that section.**]**

Textual Amendments

F411 Ss. 263B, 263C inserted (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 10 para. 5(1)**; S.I. 1997/991, art. 2

264 Relief for local constituency associations of political parties on reorganisation of constituencies.

(1) In this section "relevant date" means the date of coming into operation of an Order in Council under the [M85]Parliamentary Constituencies Act 1986 (orders specifying new parliamentary constituencies) and, in relation to any relevant date—

(a) "former parliamentary constituency" means an area which, for the purposes of parliamentary elections, was a constituency immediately before that date but is no longer such a constituency after that date; and

(b) "new parliamentary constituency" means an area which, for the purposes of parliamentary elections, is a constituency immediately after that date but was not such a constituency before that date.

(2) In this section "local constituency association" means an unincorporated association (whether described as an association, a branch or otherwise) whose primary purpose is to further the aims of a political party in an area which at any time is or was the same or substantially the same as the area of a parliamentary constituency or 2 or more parliamentary constituencies and, in relation to any relevant date—

(a) "existing association" means a local constituency association whose area was the same, or substantially the same, as the area of a former parliamentary constituency or 2 or more such constituencies; and

(b) "new association" means a local constituency association whose area is the same, or substantially the same, as the area of a new parliamentary constituency or 2 or more such constituencies.

(3) For the purposes of this section, a new association is a successor to an existing association if any part of the existing association's area is comprised in the new association's area.

(4) In any case where, before, on or after a relevant date—

(a) an existing association disposes of land to a new association which is a successor to the existing association, or

(b) an existing association disposes of land to a body (whether corporate or unincorporated) which is an organ of the political party concerned and, as soon as practicable thereafter, that body disposes of the land to a new association which is a successor to the existing association,

the parties to the disposal or, where paragraph (b) above applies, to each of the disposals, shall be treated for the purposes of tax on chargeable gains as if the land disposed of were acquired from the existing association or the body making the disposal for a consideration of such an amount as would secure that on the disposal neither a gain nor a loss accrued to that association or body.

(5) In a case falling within subsection (4) above, the new association shall be treated for the purposes of Schedule 2 as if the acquisition by the existing association of the land disposed of as mentioned in that subsection had been the new association's acquisition of it.

(6) In any case where—

(a) before, on or after a relevant date, an existing association disposes of any land which was used and occupied by it for the purposes of its functions, and

(b) the existing association transfers the whole or part of the proceeds of the disposal to a new association which is a successor to the existing association,

then, subject to subsection (7) below, this Act (and, in particular, the provisions of sections 152 to 158) shall have effect as if, since the time it was acquired by the existing association, the land disposed of had been the property of the new association and, accordingly, as if the disposal of it had been by the new association.

(7) If, in a case falling within subsection (6) above, only part of the proceeds of the disposal is transferred to the new association, that subsection shall apply—

(a) as if there existed in the land disposed of as mentioned in paragraph (a) of that subsection a separate asset in the form of a corresponding undivided share in that land, and subject to any necessary apportionments of consideration for an acquisition or disposal of, or of an interest in, that land; and

(b) as if the references in that subsection (other than paragraph (a) thereof) to the land disposed of and the disposal of it were references respectively to the corresponding undivided share referred to in paragraph (a) above and the disposal of that share;

and for this purpose a corresponding undivided share in the land disposed of is a share which bears to the whole of that land the same proportion as the part of the proceeds transferred bears to the whole of those proceeds.

(8) In this section "political party" means a political party which qualifies for exemption under section 24 of the [M86]Inheritance Tax Act 1984 (gifts to political parties).

Marginal Citations

M85 1986 c. 56.

M86 1984 c. 51.

265 Designated international organisations.

(1) Where—

(a) the United Kingdom or any of the Communities is a member of an international organisation; and

(b) the agreement under which it became a member provides for exemption from tax, in relation to the organisation, of the kind for which provision is made by this section;

the Treasury may by order designate that organisation for the purposes of this section.

(2) The Treasury may by order designate any of the Communities or the European Investment Bank for the purposes of this section.

(3) Where an organisation has been designated for the purposes of this section, then any security issued by the organisation shall be taken, for the purposes of capital gains tax, to be situated outside the United Kingdom.

266 Inter-American Development Bank.

A security issued by the Inter-American Development Bank shall be taken for the purposes of this Act to be situated outside the United Kingdom.

267 Sharing of transmission facilities.

(1) This section applies to any agreement relating to the sharing of transmission facilities—

(a) to which the parties are national broadcasting companies,

(b) which is entered into on or after 25th July 1991 (the day on which the [M87]Finance Act 1991 was passed) and before 1st January 1992 or such later date as may be specified for the purposes of this paragraph by the Secretary of State, and

(c) in relation to which the Secretary of State has certified that it is expedient that this section should apply.

(2) Where under an agreement to which this section applies one party to the agreement disposes of an asset to another party to the agreement, both parties shall be treated for the purposes of corporation tax on chargeable gains as if the asset acquired by the party to whom the disposal is made were acquired for a consideration of such amount as would secure that on the other's disposal neither a gain nor a loss would accrue to that other.

(3) Where under an agreement to which this section applies one party to the agreement disposes of an asset to another party to the agreement and the asset is one which the party making the disposal acquired on a part disposal by the party to whom the disposal under the agreement is made, then in applying subsection (2) above—

(a) section 42 shall be deemed to have had effect in relation to the part disposal with the omission of subsection (4),

(b) the amount or value of the consideration for the part disposal shall be taken to have been nil, and

(c) if the disposal under the agreement is one to which section 35(2) applies, the market value of the asset on 31st March 1982 shall be taken to have been nil.

(4) In this section "national broadcasting company" means a body corporate engaged in the broadcasting for general reception by means of wireless telegraphy of radio or television services or both on a national basis.

Marginal Citations
M87 1991 c. 31.

268 Decorations for valour or gallant conduct.

A gain shall not be a chargeable gain if accruing on the disposal by any person of a decoration awarded for valour or gallant conduct which he acquired otherwise than for consideration in money or money's worth.

269 Foreign currency for personal expenditure.

A gain shall not be a chargeable gain if accruing on the disposal by an individual of currency of any description acquired by him for the personal expenditure outside the United Kingdom of himself or his family or dependants (including expenditure on the provision or maintenance of any residence outside the United Kingdom).

270 Chevening Estate.

The enactments relating to capital gains tax (apart from this section) shall not apply in respect of property held on the trusts of the trust instrument set out in the Schedule to the [M88]Chevening Estate Act 1959.

Marginal Citations
M88 1959 c. 49.

271 Other miscellaneous exemptions.

(1) The following gains shall not be chargeable gains—

(a) gains accruing on the disposal of stock—

(i) transferred to accounts in the books of the Bank of England in the name of the Treasury or the National Debt Commissioners in pursuance of any Act of Parliament; or

(ii) belonging to the Crown, in whatever name it may stand in the books of the Bank of England;

(b) any gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund mentioned in section 613(4) of the Taxes Act

(Parliamentary pension funds) or of which income is exempt from income tax under section 614(1) of that Act (social security supplementary schemes);

(c) any gain accruing to a person from his acquisition and disposal of assets held by him as part of a fund mentioned in section 614(2) or paragraph (b), (c), (d), (f) or (g) of section 615(2) of the Taxes Act (India etc. pension funds) or as part of a fund to which subsection (3) of that section applies (pension funds for overseas employees);

(d) any gain accruing to a person from his acquisition and disposal of assets held by him as part of any fund maintained for the purpose mentioned in subsection (5)(b) of section 620 or subsection (5) of section 621 of the Taxes Act under a scheme for the time being approved under that subsection;

(e) any gain accruing on the disposal by the trustees of any settled property held on trusts in accordance with directions which are valid and effective under section 9 of the [M89]Superannuation and Trust Funds (Validation) Act 1927 (trust funds for the reduction of the National Debt);

(f) any gain accruing to a consular officer or employee, within the meaning of section 322 of the Taxes Act, of any foreign state to which that section applies on the disposal of assets which at the time of the disposal were situated outside the United Kingdom;

(g) any gain accruing to a person from his disposal of investments if, or to **[**[F412]the extent**]** that, those investments were held by him or on his behalf for the purposes of a scheme which at the time of the disposal is an exempt approved scheme;

(h) any gain accruing to a person on his disposal of investments held by him for the purposes of an approved personal pension scheme;

(j) any gain accruing to a unit holder on his disposal of units in an authorised unit trust which is also an approved personal pension scheme or is one to which section 592(10) of the Taxes Act applies.

In this subsection "exempt approved scheme" and "approved personal pension scheme" have the same meanings as in Part XIV of the Taxes Act.

(2) Where a claim is made in that behalf, a gain which accrues to a person on the disposal of investments shall not be a chargeable gain for the purposes of capital gains tax if, or to **[**[F413]the extent**]** that, those investments were held by him or on his behalf for the purposes of a fund to which section 608 of the Taxes Act applies.

A claim under this subsection shall not be allowed unless [F414]... the terms on which benefits are payable from the fund have not been altered since 5th April 1980.

(3) A local authority, a local authority association and a health service body shall be exempt from capital gains tax.

In this subsection "local authority association" and "health service body" have the meanings given by sections 519 and 519A of the Taxes Act respectively.

(4) Any bonus to which section 326 or 326A of the Taxes Act (certified contractual savings schemes and tax-exempt special savings accounts) applies shall be disregarded for all purposes of the enactments relating to capital gains tax.

In any case where there is a transfer to which section 216 applies, this subsection shall have effect in relation to any bonus payable after the transfer under a savings scheme which immediately before the transfer was a certified contractual savings scheme notwithstanding that it ceased to be such a scheme by reason of the transfer.

(5) A signatory to the Operating Agreement made pursuant to the Convention on the International Maritime Satellite Organisation which came into force on 16th July 1979, other than a signatory designated for the purposes of the Agreement by the United Kingdom in accordance with the Convention, shall be exempt from capital gains tax in respect of any payment received by that signatory from the Organisation in accordance with the Agreement.

(6) The following shall, on a claim made in that behalf to the Board, be exempt from tax in respect of all chargeable gains—

(a) the Trustees of the British Museum and the Trustees of the **[**F415Natural History Museum**]**; and

(b) an Association within the meaning of section 508 of the Taxes Act (scientific research organisations).

(7) The Historic Buildings and Monuments Commission for England, the Trustees of the National Heritage Memorial Fund, **[**F416the National Endowment for Science, Technology and the Arts,**]** the United Kingdom Atomic Energy Authority and the National Radiological Protection Board shall be exempt from tax in respect of chargeable gains; and for the purposes of this subsection gains accruing from investments or deposits held for the purposes of any pension scheme provided and maintained by the United Kingdom Atomic Energy Authority shall be treated as if those gains and investments and deposits belonged to the Authority.

(8) There shall be exempt from tax any chargeable gains accruing to the issue department of the Reserve Bank of India constituted under an Act of the Indian legislature called the Reserve Bank of India Act 1934, or to the issue department of the State Bank of Pakistan constituted under certain orders made under section 9 of the M90Indian Independence Act 1947.

F417(9) . . . . . .

(10) In subsections (1)(g) and (h) and (2) above "investments" includes futures contracts and options contracts; and paragraph 7(3)(d) of Schedule 22 to the Taxes Act shall be construed accordingly.

(11) For the purposes of subsection (10) above a contract is not prevented from being a futures contract or an options contract by the fact that any party is or may be entitled to receive or liable to make, or entitled to receive and liable to make, only a payment of a sum (as opposed to a transfer of assets other than money) in full settlement of all obligations.

Textual Amendments

F412 Words in s. 271(1)(g) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 63(1)**

F413 Words in s. 271(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 63(1)**

F414 Words in s. 271(2) repealed (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 20 para. 63(2), **Sch. 41 Pt. V(10)**

F415 Words in s. 271(6)(a) substituted (1.9.1992) by 1992 c. 44, s. 11(2), **Sch. 8 Pt. I para. 1(1)(2)(9)**; S.I. 1992/1874, **art.2**

F416 Words in s. 271(7) inserted (2.7.1998) by National Lottery Act 1998 (c. 22), **ss. 24(2)**, 27(4)(b)

F417 S. 271(9) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), Sch. 10 para. 5(2), **Sch. 18 Pt. VI(10)**; S.I. 1997/991, art. 2

Marginal Citations

M89 1927 c. 41.

M90 1947 c. 30.

PART VIII

SUPPLEMENTAL

272 Valuation: general.

(1) In this Act "market value" in relation to any assets means the price which those assets might reasonably be expected to fetch on a sale in the open market.

(2) In estimating the market value of any assets no reduction shall be made in the estimate on account of the estimate being made on the assumption that the whole of the assets is to be placed on the market at one and the same time.

(3) Subject to subsection (4) below, the market value of shares or securities **[**F418quoted**]** in The Stock Exchange Daily Official List shall, except where in consequence of special circumstances prices quoted in that List are by themselves not a proper measure of market value, be as follows—

(a) the lower of the 2 prices shown in the quotations for the shares or securities in The Stock Exchange Daily Official List on the relevant date plus one-quarter of the difference between those 2 figures, or **[**F419where a single price is shown in the quotations for the shares or securities in The Stock Exchange Daily Official List on the relevant date, that price, or**]**

(b) halfway between the highest and lowest prices at which bargains, other than bargains done at special prices, were recorded in the shares or securities for the relevant date,

choosing the amount under paragraph (a), if less than that under paragraph (b), or if no such bargains were recorded for the relevant date, and choosing the amount under paragraph (b) if less than that under paragraph (a).

(4) Subsection (3) shall not apply to shares or securities for which The Stock Exchange provides a more active market elsewhere than on the London trading floor; and, if the London trading floor is closed on the relevant date, the market value shall be ascertained by reference to the latest previous date or earliest subsequent date on which it is open, whichever affords the lower market value.

(5) In this Act "market value" in relation to any rights of unit holders in any unit trust scheme the buying and selling prices of which are published regularly by the managers of the scheme shall mean an amount equal to the buying price (that is the lower price) so published on the relevant date, or if none were published on that date, on the latest date before.

[F420(5AA)) In this Act "market value" in relation to shares of a given class in an open-ended investment company the prices of which are published regularly by the authorised corporate director of that company (whether or not those shares are also quoted in The Stock Exchange Daily Official List) shall mean an amount equal to the price so published on the relevant date, or if no price was published on that date, on the latest date before that date.

(5AB) In subsection (5AA) "authorised corporate director" has the meaning given by subsection (10) of section 468 of the Taxes Act, read with subsections (16) and (17) of that section, as those subsections are added by regulation 10(4) of the Open-ended Investment Companies (Tax) Regulations 1997; and accordingly the reference in subsection (16) of that section to "the Tax Acts" shall be construed as if it included a reference to this Act.**]**

(6) The provisions of this section, with sections 273 and 274, have effect subject to Part I of Schedule 11.

Textual Amendments

F418 Word in s. 272(3) substituted (with effect in accordance with Sch. 38 para. 12(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 12(1)**

F419 Words in s. 272(3)(a) added (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), regs. 1(1), **22(a)**

F420 S. 272(5AA)(5AB) inserted (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), regs. 1(1), **22(b)**

Modifications etc. (not altering text)

C188 S. 272 applied (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 18(5)**

C189 S. 272 applied by Income and Corporation Taxes Act 1988 (c. 1), **ss. 591C-591D** (as inserted (with effect in accordance with **s. 61(3)** of the amending Act) by Finance Act 1995 (c. 4), s. 61(1))

C190 S. 272 applied (E.W.S.) (8.11.1995) by Gas Act 1995 (c. 45), ss. 17(1), 18(2), **Sch. 5 para. 10(2)**

C191 S. 272 applied by Building Societies Act 1986 (c. 53), s. 102C(3) (as inserted (with effect in accordance with s. 2(2) of the amending Act) by Building Societies (Distributions) Act 1997 (c. 41), s. 1(1))

C192 S. 272(2)-(4) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 24(5)**

273 Unquoted shares and securities.

(1) The provisions of subsection (3) below shall have effect in any case where, in relation to an asset to which this section applies, there falls to be determined by virtue of section 272(1) the price which the asset might reasonably be expected to fetch on a sale in the open market.

(2) The assets to which this section applies are shares and securities which are not quoted on a recognised stock exchange at the time as at which their market value for the purposes of tax on chargeable gains falls to be determined.

(3) For the purposes of a determination falling within subsection (1) above, it shall be assumed that, in the open market which is postulated for the purposes of that determination, there is available to any prospective purchaser of the asset in question all the information which a prudent prospective purchaser of the asset might reasonably require if he were proposing to purchase it from a willing vendor by private treaty and at arm's length.

Modifications etc. (not altering text)

C193 S. 273(3) applied (27.7.1993) by 1993 c. 37, s. 12, **Sch. 2 Pt. I para. 24(6)**

274 Value determined for inheritance tax.

Where on the death of any person inheritance tax is chargeable on the value of his estate immediately before his death and the value of an asset forming part of that estate has been ascertained (whether in any proceedings or otherwise) for the purposes of that tax, the value so ascertained shall be taken for the purposes of this Act to be the market value of that asset at the date of the death.

275 Location of assets.

For the purposes of this Act—

(a) the situation of rights or interests (otherwise than by way of security) in or over immovable property is that of the immovable property,

(b) subject to the following provisions of this subsection, the situation of rights or interests (otherwise than by way of security) in or over tangible movable property is that of the tangible movable property,

(c) subject to the following provisions of this subsection, a debt, secured or unsecured, is situated in the United Kingdom if and only if the creditor is resident in the United Kingdom,

(d) shares or securities issued by any municipal or governmental authority, or by any body created by such an authority, are situated in the country of that authority,

(e) subject to paragraph (d) above, registered shares or securities are situated where they are registered and, if registered in more than one register, where the principal register is situated,

(f) a ship or aircraft is situated in the United Kingdom if and only if the owner is then resident in the United Kingdom, and an interest or right in or over a ship or aircraft is situated in the United Kingdom if and only if the person entitled to the interest or right is resident in the United Kingdom,

(g) the situation of good-will as a trade, business or professional asset is at the place where the trade, business or profession is carried on,

(h) patents, trade marks, [F421]... and registered designs are situated where they are registered, and if registered in more than one register, where each register is situated, and rights or licences to use a patent, trade mark, [F421]... or registered design are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom,

(j) copyright, design right and franchises, and rights or licences to use any copyright work or design in which design rights subsists, are situated in the United Kingdom if they or any right derived from them are exercisable in the United Kingdom,

(k) a judgment debt is situated where the judgment is recorded,

(l) a debt which—

(i) is owed by a bank, and

(ii) is not in sterling, and

(iii) is represented by a sum standing to the credit of an account in the bank of an individual who is not domiciled in the United Kingdom,

is situated in the United Kingdom if and only if that individual is resident in the United Kingdom and the branch or other place of business of the bank at which the account is maintained is itself situated in the United Kingdom.

Textual Amendments

F421 Words in s. 275(h) repealed (31.10.1994) by Trade Marks Act 1994 (c. 26), s. 109(1), **Sch. 5**; S.I. 1994/2550, art. 2

Modifications etc. (not altering text)

C194 S. 275 applied (27.7.1993 with effect in relation to accounting periods beginning after 31.12.1992 as mentioned in Sch. 19AC) by 1988 c. 1, **Sch. 19AC** (as inserted by 1993 c. 34, s. 97, **Sch. 9 para.1**)

C195 S. 275(h) modified (31.10.1994) by Trade Marks Act 1994 (c. 26), s. 109(1), Sch. 4 para. 1(1)**(2)**; S.I. 1994/2550, art. 2

276 The territorial sea and the continental shelf.

(1) The territorial sea of the United Kingdom shall for all purposes of the taxation of chargeable gains (including the following provisions of this section) be deemed to be part of the United Kingdom.

(2) In this section—

(a) "exploration or exploitation activities" means activities carried on in connection with the exploration or exploitation of so much of the seabed and subsoil and their natural resources as is situated in the United Kingdom or a designated area; and

(b) "exploration or exploitation rights" means rights to assets to be produced by exploration or exploitation activities or to interests in or to the benefit of such assets; and

(c) references to the disposal of exploration or exploitation rights include references to the disposal of shares deriving their value or the greater part of their value directly or indirectly from such rights, other than shares **[**F422listed**]** on a recognised stock exchange; and

(d) "shares" includes stock and any security as defined in section 254(1) of the Taxes Act; and

(e) "designated area" means an area designated by Order in Council under section 1(7) of the M91Continental Shelf Act 1964.

(3) Any gains accruing on the disposal of exploration or exploitation rights shall be treated for the purposes of this Act as gains accruing on the disposal of assets situated in the United Kingdom.

(4) Gains accruing on the disposal of—

(a) exploration or exploitation assets which are situated in a designated area, or

(b) unquoted shares deriving their value or the greater part of their value directly or indirectly from exploration or exploitation assets situated in the United Kingdom or a designated area or from such assets and exploration or exploitation rights taken together,

shall be treated for the purposes of this Act as gains accruing on the disposal of assets situated in the United Kingdom.

(5) For the purposes of this section, an asset disposed of is an exploration or exploitation asset if either—

(a) it is not a mobile asset and it is being or has at some time been used in connection with exploration or exploitation activities carried on in the United Kingdom or a designated area; or

(b) it is a mobile asset which has at some time been used in connection with exploration or exploitation activities so carried on and is dedicated to an oil field in which the person making the disposal, or a person connected with him, is or has been a participator;

and expressions used in paragraphs (a) and (b) above have the same meaning as if those paragraphs were included in Part I of the [M92]Oil Taxation Act 1975.

(6) In subsection (4)(b) above "unquoted shares" means shares other than those which are **[**[F423]listed**]** on a recognised stock exchange; and references in subsections (7) and (8) below to exploration or exploitation assets include references to unquoted shares falling within subsection (4)(b).

(7) Gains accruing to a person not resident in the United Kingdom on the disposal of exploration or exploitation rights or of exploration or exploitation assets shall, for the purposes of capital gains tax or corporation tax on chargeable gains, be treated as gains accruing on the disposal of assets used for the purposes of a trade carried on by that person in the United Kingdom through a branch or agency.

(8) In relation to exploration or exploitation rights or exploration or exploitation assets disposed of by a company resident in a territory outside the United Kingdom to a company resident in the same territory or in the United Kingdom, sections 171 to 174 and 178 to 181 shall apply as if in section 170 subsections (2)(a) and (9) were omitted.

Textual Amendments

F422 Word in s. 276(2)(c) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 10(2)(d)**

F423 Word in s. 276(6) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 10(2)(d)**

Marginal Citations

M91 1964 c. 29.

M92 1975 c. 22.

277 Double taxation relief.

(1) For the purpose of giving relief from double taxation in relation to capital gains tax and tax on chargeable gains charged under the law of any country outside the United Kingdom, in Chapters I and II of Parts XVIII of the Taxes Act, as they apply for the purposes of income tax, for references to income there shall be substituted references to capital gains and for references to income tax there shall be substituted references to capital gains tax meaning, as the context may require, tax charged under the law of the United Kingdom or tax charged under the law of a country outside the United Kingdom.

(2) Any arrangements set out in an order made under section 347 of the [M93]Income Tax Act 1952 before 5th August 1965 (the date of the passing of the [M94]Finance Act 1965) shall so far as they provide (in whatever terms) for relief from tax chargeable in the United Kingdom on capital gains have effect in relation to capital gains tax.

(3) So far as by virtue of this section capital gains tax charged under the law of a country outside the United Kingdom may be brought into account under the said Chapters I and II as applied by this section, that tax, whether relief is given by virtue of this section in respect of it or not, shall not be taken into account for the purposes of those Chapters as they apply apart from this section.

(4) Section 816 of the Taxes Act (disclosure of information for purposes of double taxation) shall apply in relation to capital gains tax as it applies in relation to income tax.

Marginal Citations
M93 1952 c. 10.
M94 1965 c. 25.

278 Allowance for foreign tax.

Subject to section 277, the tax chargeable under the law of any country outside the United Kingdom on the disposal of an asset which is borne by the person making the disposal shall be allowable as a deduction in the computation of the gain.

279 Foreign assets: delayed remittances.

(1) Subsection (2) below applies where—

(a) chargeable gains accrue from the disposal of assets situated outside the United Kingdom, and

[[F424](b) the person charged or chargeable makes a claim, and

(c) the conditions set out in subsection (3) below are, so far as applicable, satisfied as respects those gains ("the qualifying gains");**]**

and subsection (2)(b) also applies where a claim has been made under section 13 of the 1979 Act.

(2) For the purposes of capital gains tax—

(a) the amount of the qualifying gains shall be deducted **[**[F425](before the application of any taper relief)**]** from the amounts on which the claimant is assessed to capital gains tax for the year in which the qualifying gains accrued to the claimant, but

(b) the amount so deducted shall be assessed to capital gains tax on the claimant (or his personal representatives) as if it were an amount of chargeable gains accruing in the year of assessment in which the conditions set out in subsection (3) below cease to be satisfied.

(3) The conditions are—

(a) that the claimant was unable to transfer the qualifying gains to the United Kingdom, and

(b) that that inability was due to the laws of the territory where the assets were situated at the time of the disposal, or to the executive action of its government, or to the impossibility of obtaining foreign currency in that territory, and

(c) that the inability was not due to any want of reasonable endeavours on the part of the claimant.

(4) Where under an agreement entered into under arrangements made by the Secretary of State in pursuance of section 1 of the [M95]Overseas Investment and Export Guarantees Act 1972 or section 11 of the [M96]Export Guarantees and Overseas Investment Act 1978 any payment is made by the Exports Credits Guarantee Department in respect of any gains which cannot be transferred to the United Kingdom, then, to the extent of the payment, the gains shall be treated as gains with respect to which the conditions mentioned in subsection (3) above are not satisfied (and accordingly cannot cease to be satisfied).

[[F426](5) No claim under this section in respect of a chargeable gain shall be made—

(a) in the case of a claim for the purposes of capital gains tax, at any time after the fifth anniversary of the 31st January next following the year of assessment in which the gain accrues; or

(b) in the case of a claim for the purposes of corporation tax, more than 6 years after the end of the accounting period in which the gain accrues.**]**

(6) The personal representatives of a deceased person may make any claim which he might have made under this section if he had not died.

(7) Where—

(a) a claim under this section is made (or has been made under section 13 of the 1979 Act) by a man in respect of chargeable gains accruing to his wife before 6th April 1990, and

(b) by virtue of this section the amount of the gains falls to be assessed to capital gains tax as if it were an amount of gains accruing in the year 1992-93 or a subsequent year of assessment,

it shall be assessed not on the claimant (or his personal representatives) but on the person to whom the gains accrued (or her personal representatives).

(8) In relation to disposals before 19th March 1991 subsection (3)(b) above shall have effect with the substitution of the words "income arose" for the words " assets were situated at the time of the disposal ".

Textual Amendments

F424 S. 279(1)(b)(c) substituted for s. 279(1)(b) (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 64**

F425 Words in s. 279(2)(a) inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 21 para. 9**

F426 S. 279(5) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 41**

Marginal Citations

M95 1972 c. 40.

M96 1978 c. 18.

280 Consideration payable by instalments.

If the consideration, or part of the consideration, taken into account in the computation of the gain is payable by instalments over a period beginning not earlier than the time when the disposal is made, being a period exceeding 18 months, then, **[**[F427]at the option

of the person making the disposal, the tax on a chargeable gain accruing on the disposal may**]** be paid by such instalments as the Board may allow over a period not exceeding 8 years and ending not later than the time at which the last of the first-mentioned instalments is payable.

Textual Amendments

F427 Words in s. 280 substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 65**

281 Payment by instalments of tax on gifts.

(1) Subsection (2) below applies where—

(a) the whole or any part of any assets to which this section applies is disposed of by way of gift or is deemed to be disposed of under section 71(1) or 72(1), and

(b) the disposal is one—

(i) to which neither section 165(4) nor section 260(3) applies (or would apply if a claim were duly made), or

(ii) to which either of those sections does apply but on which the held-over gain (within the meaning of the section applying) is less than the chargeable gain which would have accrued on that disposal apart from that section.

(2) Where this subsection applies, the capital gains tax chargeable on a gain accruing on the disposal may, if the person paying it by notice to the inspector so elects, be paid by 10 equal yearly instalments.

(3) The assets to which this section applies are—

(a) land or an estate or interest in land,

(b) any shares or securities of a company which, immediately before the disposal, gave control of the company to the person by whom the disposal was made or deemed to be made, and

(c) any shares or securities of a company not falling under paragraph (b) above and not **[**F428listed**]** on a recognised stock exchange nor dealt in on the Unlisted Securities Market.

(4) Where tax is payable by instalments by virtue of this section, the first instalment shall be due on the day on which the tax would be payable apart from this section.

(5) Subject to the following provisions of this section—

[F429(a) tax payable by instalments by virtue of this section carries interest in accordance with Part IX of the Management Act as that Part applies where no election is made under subsection (2) above, and**]**

(b) the interest on the unpaid portion of the tax shall be added to each instalment and paid accordingly.

(6) Tax payable by instalments by virtue of this section which is for the time being unpaid, with interest **[**F430(determined in accordance with subsection (5)(a) above)**]** to the date of payment, may be paid at any time.

(7) Tax which apart from this subsection would be payable by instalments by virtue of this section and which is for the time being unpaid, with interest **[**F431(determined in

accordance with subsection (5)(a) above as if the tax were tax payable by instalments by virtue of this section)**]** to the date of payment, shall become due and payable immediately if—

(a) the disposal was by way of gift to a person connected with the donor or was deemed to be made under section 71(1) or 72(1), and

(b) the assets are disposed of for valuable consideration under a subsequent disposal (whether or not the subsequent disposal is made by the person who acquired them under the first disposal).

Textual Amendments

F428 Word in s. 281(3)(c) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 10(2)(e)**

F429 S. 281(5)(a) substituted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 15(2)**

F430 Words in s. 281(6) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 15(3)**

F431 Words in s. 281(7) inserted (with effect in accordance with Sch. 18 para. 17(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 18 para. 15(4)**

282 Recovery of tax from donee.

(1) If in any year of assessment a chargeable gain accrues to any person on the disposal of an asset by way of gift and any amount of capital gains tax assessed on that person for that year of assessment is not paid within 12 months from the date when the tax becomes payable, the donee may, by an assessment made not later than 2 years from the date when the tax became payable, be assessed and charged (in the name of the donor) to capital gains tax on an amount not exceeding the amount of the chargeable gain so accruing, and not exceeding the grossed up amount of that capital gains tax unpaid at the time when he is so assessed, grossing up at the marginal rate of tax, that is to say, taking capital gains tax on a chargeable gain at the amount which would not have been chargeable but for that chargeable gain.

(2) A person paying any amount of tax in pursuance of this section shall be entitled to recover a sum of that amount from the donor.

(3) References in this section to a donor include, in the case of an individual who has died, references to his personal representatives.

(4) In this section references to a gift include references to any transaction otherwise than by way of a bargain made at arm's length so far as money or money's worth passes under the transaction without full consideration in money or money's worth, and "donor" and "donee" shall be construed accordingly; and this section shall apply in relation to a gift made by 2 or more donors with the necessary modifications and subject to any necessary apportionments.

283 Repayment supplements.

(1) Subject to the provisions of this section, where in the case of capital gains tax paid by or on behalf of an individual for a year of assessment **[**F432a repayment of that tax is made by the Board or an officer of the Board**]**, the repayment shall be increased under this section by an amount ("a repayment supplement") equal to interest on the

amount repaid at the rate applicable under section 178 of the [M97]Finance Act 1989 for the period (if any) between the relevant time and **[**[F433]the date on which**]** the order for the repayment is issued.

[[F434](2) For the purposes of subsection (1) above, **[**[F435]the relevant time is the date on which the tax was paid**].]**

(3) A repayment supplement shall not be payable under this section in respect of a repayment or payment made in consequence of an order or judgment of a court having power to allow interest on the repayment or payment.

(4) Subsections (1) to (3) above shall apply in relation to a **[**[F436]trust or**]**, the personal representatives of a deceased person as such (within the meaning of section 701(4) of that Act) as they apply in relation to an individual.

[F437](5) . . . . . .

Textual Amendments

F432 Words in s. 283(1) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 46(1)(a)**

F433 Words in s. 283(1) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 46(1)(b)**

F434 S. 283(2) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 46(2)**

F435 Words in s. 283(2) substituted (with effect in accordance with s. 92(6) of the amending Act) by Finance Act 1997 (c. 16), **s. 92(5)**

F436 Words in s. 283(4) substituted (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), **Sch. 19 para. 46(3)**

F437 S. 283(5) repealed (with effect in accordance with s. 199(2) of the amending Act) by Finance Act 1994 (c. 9), Sch. 19 para. 46(4), **Sch. 26 Pt. V(23)**

Marginal Citations

M97 1989 c. 26.

284 Income tax decisions.

Any assessment to income tax or decision on a claim under the Income Tax Acts, and any decision on an appeal under the Income Tax Acts against such an assessment or decision, shall be conclusive so far as, under any provision of this Act, liability to tax depends on the provisions of the Income Tax Acts.

[[F438]284A Concessions that defer a charge.

(1) This section applies where—

(a) a person ("the original taxpayer") has at any time obtained for any chargeable period ("the first chargeable period") the benefit of any capital gains relief to which he had no statutory entitlement;

(b) the benefit of the relief was obtained in reliance on any concession;

(c) the concession was first published by the Board before 9th March 1999 or (having been published on or after that date) replaced a concession

satisfying the requirements of this paragraph with a concession to the same or substantially the same effect; and

(d) the concession involved the application (with or without modifications), to a case to which they would not otherwise have applied, of the provisions of any enactment ("the relevant statutory provisions").

(2) This section applies only if, at the time when the original taxpayer obtained the benefit of the relief, the concession was one available generally to any person falling within its terms.

(3) If the benefit obtained for the first chargeable period by the original taxpayer is repudiated for any later chargeable period (whether by the original taxpayer or by another person), the enactments relating to the taxation of chargeable gains shall have effect as if a chargeable gain equal to the amount of that benefit accrued in the later chargeable period to the person repudiating the benefit.

(4) For the purposes of this section—

(a) a capital gains relief for any chargeable period is a relief (of whatever description) the effect of which is that the amount of the chargeable gains taken to have accrued to that person in that period is less than it otherwise would have been; and

(b) the amount of the benefit of any such relief is the amount by which, as a consequence of that relief, those gains are less than they otherwise would have been.

(5) Where, without applying a specific enactment, any concession has the effect that—

(a) any asset is treated as the same as another asset and as acquired as the other asset was acquired,

(b) any two or more assets are treated as a single asset, or

(c) any disposal is treated as having been a disposal on which neither a gain nor a loss accrued,

that concession shall be assumed for the purposes of this section to have involved the application, to a case to which it would not otherwise have applied, of the provisions of an enactment to the corresponding effect.

(6) For the purposes of this section the benefit of any relief obtained by the original taxpayer for the first chargeable period is repudiated by a person for a later chargeable period if—

(a) circumstances arise such that, had the equivalent circumstances arisen in the case of the corresponding relief under the relevant statutory provisions, the whole or a part of the benefit of that relief would have fallen to be recouped from that person in the later chargeable period;

(b) apart from this section, the recoupment in the actual circumstances of the whole or a part of the benefit obtained by the original taxpayer is prevented by the fact that the original taxpayer relied on a concession (rather than on the relevant statutory provisions) to obtain that benefit; and

(c) the person from whom, in the equivalent circumstances, the amount of the benefit or any part of it would have fallen to be recouped is not precluded by subsection (8) below from relying on that fact in relation to that amount or part.

(7) For the purposes of this section an amount of the benefit of a capital gains relief is recouped from any person in a chargeable period to the extent that an amount is so brought into account in his case for that period as to secure that—

(a) the amount of his chargeable gains for that period is taken to be more than it otherwise would have been by an amount directly or indirectly representing the whole or a part of the amount of the benefit; or

(b) the amount of his allowable losses for that period is taken to be less than it otherwise would have been by an amount directly or indirectly representing the whole or a part of the amount of the benefit.

(8) Where—

(a) any such circumstances as are mentioned in subsection (6)(a) above have arisen in relation to the relief the benefit of which has been obtained by the original taxpayer,

(b) the person from whom, in the equivalent circumstances, the whole or any part of the amount of the benefit would have fallen to be recouped has accepted that, in the actual circumstances, the whole or a part of the benefit obtained by the original taxpayer may be recouped from him, and

(c) that acceptance is indicated in writing to the Board (whether by the making or amendment of a self-assessment or otherwise),

that person's rights subsequently to amend, appeal against or otherwise challenge any assessment shall not be exercised in any manner inconsistent with his acceptance of that matter (which shall be irrevocable).

(9) In this section "concession" includes any practice, interpretation or other statement in the nature of a concession.

Textual Amendments

F438 Ss. 284A, 284B inserted (with effect in accordance with s. 76(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 76(1)**

284B Provisions supplementary to section 284A.

(1) Chargeable gains that are treated as accruing to any person under section 284A(3) shall not be eligible for taper relief.

(2) The total amount of chargeable gains that are treated as accruing to any person under subsection (3) of section 284A in respect of any such benefit as is referred to in that subsection shall not exceed the amount of that benefit.

(3) Where, after any assessment to tax has been made on the basis that any chargeable gain is treated as having accrued to any person under section 284A(3)—

(a) the person assessed, within any of the periods allowed by subsection (4) below, gives an indication for the purposes of section 284A(8), or

(b) a final determination of the original taxpayer's liability to tax for the first chargeable period is made on the basis that the original taxpayer did not, or was not entitled to, rely on the concession in question,

all such adjustments shall be made (whether by way of assessment, amendment of an assessment, repayment of tax or otherwise) as are necessary to secure that no person is subjected to any greater liability by virtue of section 284A(3) than he would have been

had the indication been given, or the final determination made, before the making of the assessment.

(4) The periods allowed by this subsection are—

(a) the period of twelve months beginning with the making of the assessment;

(b) the period within which the person is entitled to amend his self-assessment or company tax return for the chargeable period in which the chargeable gain under section 284A(3) is treated as having accrued to him;

(c) where the person makes a claim for any further relief against the amount that may be recouped from him by virtue of his indication under section 284A(8), the period allowed for making that claim.

(5) Subsection (3) above has effect notwithstanding any time limits relating to the making or amendment of an assessment for any chargeable period.**]**

Textual Amendments

F438 Ss. 284A, 284B inserted (with effect in accordance with s. 76(2) of the amending Act) by Finance Act 1999 (c. 16), **s. 76(1)**

285 Recognised investment exchanges.

The Board may by regulations make provision securing that enactments relating to tax on chargeable gains and referring to The Stock Exchange have effect, for such purposes and subject to such modifications as may be prescribed by the regulations, in relation to all other recognised investment exchanges (within the meaning of the [M98]Financial Services Act 1986), or in relation to such of those exchanges as may be so prescribed.

Marginal Citations

M98 1986 c. 60.

286 Connected persons: interpretation.

(1) Any question whether a person is connected with another shall for the purposes of this Act be determined in accordance with the following subsections of this section (any provision that one person is connected with another being taken to mean that they are connected with one another).

(2) A person is connected with an individual if that person is the individual's husband or wife, or is a relative, or the husband or wife of a relative, of the individual or of the individual's husband or wife.

[[F439](3) A person, in his capacity as trustee of a settlement, is connected with—

(a) any individual who in relation to the settlement is a settlor,

(b) any person who is connected with such an individual, and

(c) any body corporate which is connected with that settlement.

In this subsection "settlement" and "settlor" have the same meaning as in Chapter IA of Part XV of the Taxes Act (see section 660G(1) and (2) of that Act).

(3A) For the purpose of subsection (3) above a body corporate is connected with a settlement if—

(a) it is a close company (or only not a close company because it is not resident in the United Kingdom) and the participators include the trustees of the settlement; or

(b) it is controlled (within the meaning of section 840 of the Taxes Act) by a company falling within paragraph (a) above.**]**

(4) Except in relation to acquisitions or disposals of partnership assets pursuant to bona fide commercial arrangements, a person is connected with any person with whom he is in partnership, and with the husband or wife or a relative of any individual with whom he is in partnership.

(5) A company is connected with another company—

(a) if the same person has control of both, or a person has control of one and persons connected with him, or he and persons connected with him, have control of the other, or

(b) if a group of 2 or more persons has control of each company, and the groups either consist of the same persons or could be regarded as consisting of the same persons by treating (in one or more cases) a member of either group as replaced by a person with whom he is connected.

(6) A company is connected with another person, if that person has control of it or if that person and persons connected with him together have control of it.

(7) Any 2 or more persons acting together to secure or exercise control of a company shall be treated in relation to that company as connected with one another and with any person acting on the directions of any of them to secure or exercise control of the company.

(8) In this section "relative" means brother, sister, ancestor or lineal descendant.

Textual Amendments

F439 S. 286(3)(3A) substituted for s. 286(3) (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 31**

287 Orders and regulations made by the Treasury or the Board.

(1) Subject to subsection (2) below, any power of the Treasury or the Board to make any order or regulations under this Act or any other enactment relating to the taxation of chargeable gains passed after this Act shall be exercisable by statutory instrument.

(2) Subsection (1) above shall not apply in relation to any power conferred by section 288(6).

(3) Subject to subsection (4) below and to any other provision to the contrary, any statutory instrument to which subsection (1) above applies shall be subject to annulment in pursuance of a resolution of the House of Commons.

(4) Subsection (3) above shall not apply in relation to an order or regulations made under section 3(4) or 265 or paragraph 1 of Schedule 9, or—

(a) if any other Parliamentary procedure is expressly provided; or

(b) if the order in question is an order appointing a day for the purposes of any provision, being a day as from which the provision will have effect, with or without amendments, or will cease to have effect.

288 Interpretation.

(1) In this Act, unless the context otherwise requires—

"the 1979 Act" means the [M99]Capital Gains Tax Act 1979;

"the 1990 Act" means the [M100]Capital Allowances Act 1990;

"allowable loss" shall be construed in accordance with sections 8(2) and 16;

"the Board" means the Commissioners of Inland Revenue;

"building society" has the same meaning as in the [M101]Building Societies Act 1986;

"chargeable period" means a year of assessment or an accounting period of a company for purposes of corporation tax;

"class", in relation to shares or securities, means a class of shares or securities of any one company;

"close company" has the meaning given by sections 414 and 415 of the Taxes Act;

"collective investment scheme" has the same meaning as in the [M102]Financial Services Act 1986;

"company" includes any body corporate or unincorporated association but does not include a partnership, and shall be construed in accordance with section 99;

"control" shall be construed in accordance with section 416 of the Taxes Act;

"double taxation relief arrangements" means, in relation to a company, arrangements having effect by virtue of section 788 of the Taxes Act and, in relation to any other person, means arrangements having effect by virtue of that section as extended to capital gains tax by section 277;

"dual resident investing company" has the meaning given by section 404 of the Taxes Act;

"inspector" means any inspector of taxes;

"investment trust" has the meaning given by section 842 of the Taxes Act;

"land" includes messuages, tenements, and hereditaments, houses and buildings of any tenure;

"local authority" has the meaning given by section 842A of the Taxes Act;

"the Management Act" means the [M103]Taxes Management Act 1970;

"notice" means notice in writing;

"personal representatives" has the meaning given by section 701(4) of the Taxes Act;

"recognised stock exchange" has the meaning given by section 841 of the Taxes Act;

"shares" includes stock;

"the Taxes Act" means the [M104]Income and Corporation Taxes Act 1988;

"trade" has the same meaning as in the Income Tax Acts;

"trading stock" has the meaning given by section 100(2) of the Taxes Act;

[[F440]"venture capital trust" has the meaning given by section 842AA of the Taxes Act;**]**

"wasting asset" has the meaning given by section 44 and paragraph 1 of Schedule 8;

"year of assessment" means, in relation to capital gains tax, a year beginning on 6th April and ending on 5th April in the following calendar year, and "1992-93" and so on indicate years of assessment as in the Income Tax Acts;

and any reference to a particular section, Part or Schedule is a reference to that section or Part of, or that Schedule to, this Act.

(2) In this Act "retail prices index" has the same meaning as in the Income Tax Acts and, accordingly, any reference in this Act to the retail prices index shall be construed in accordance with section 833(2) of the Taxes Act.

(3) References in this Act to a married woman living with her husband shall be construed in accordance with section 282 of the Taxes Act.

[F441](4) . . . . . .

(5) For the purposes of this Act, shares or debentures comprised in any letter of allotment or similar instrument shall be treated as issued unless the right to the shares or debentures thereby conferred remains provisional until accepted and there has been no acceptance.

(6) In this Act "recognised futures exchange" means the London International Financial Futures Exchange and any other futures exchange which is for the time being designated for the purposes of this Act by order made by the Board.

(7) An order made by the Board under subsection (6) above—

(a) may designate a futures exchange by name or by reference to any class or description of futures exchanges, including, in the case of futures exchanges in a country outside the United Kingdom, a class or description framed by reference to any authority or approval given in that country; and

(b) may contain such transitional and other supplemental provisions as appear to the Board to be necessary or expedient.

(8) The Table below indexes other general definitions in this Act.

Expression defined	***Reference***
"Absolutely entitled as against the trustee"	S.60(2)
[[F442]"Authorised corporate director"	S.272(5AB) (as that provision is inserted by regulation 22(b) of the Open-ended Investment Companies (Tax) Regulations 1997)**]**
"Authorised unit trust"	S.99
"Branch or agency"	S.10(6)
"Chargeable gain"	S.15(2)
"Connected", in references to persons being connected with one another	S.286

"Court investment fund"	S.100
"Gilt-edged securities"	Sch.9
"Indexation allowance"	S.53
"Lease" and cognate expressions	Sch.8 para.10(1)
"Legatee"	S.64(2),(3)
"Market value"	S.272 to 274 and Sch.11
[F443"Open-ended investment company"	S.99 (as that section is modified by regulation 20 of the Open-ended Investment Companies (Tax) Regulations 1997)**]**
"Part disposal"	S.21(2)
"Qualifying corporate bond"	S.117
"Relevant allowable expenditure"	S.53
"Resident" and "ordinarily resident"	S.9(1)
"Settled property"	S.68
"Unit trust scheme"	S.99

Textual Amendments

F440 Words in s. 288(1) inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), **s. 72(7)**

F441 S. 288(4) repealed (with effect in accordance with Sch. 41 Pt. VIII(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. VIII(3)**

F442 Words in s. 288(8) inserted (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), regs. 1(1), **23(a)**

F443 Words in s. 288(8) inserted (28.4.1997) by The Open-ended Investment Companies (Tax) Regulations 1997 (S.I. 1997/1154), regs. 1(1), **23(b)**

Marginal Citations

M99 1979 c. 14.
M100 1990 c. 1.
M101 1986 c. 53.
M102 1986 c. 60.
M103 1970 c. 9.
M104 1988 c. 1.

289 Commencement.

(1) Except where the context otherwise requires, this Act has effect in relation to tax for the year 1992-93 and subsequent years of assessment, and tax for other chargeable periods beginning on or after 6th April 1992, and references to the coming into force of this Act or any provision in this Act shall be construed accordingly.

(2) The following provisions of this Act, that is—

(a) so much of any provision of this Act as authorises the making of any order or other instrument, and

(b) except where the tax concerned is all tax for chargeable periods to which this Act does not apply, so much of any provision of this Act as confers any power or imposes any duty the exercise or performance of which operates or may operate in relation to tax for more than one chargeable period,

shall come into force for all purposes on 6th April 1992 to the exclusion of the corresponding enactments repealed by this Act.

290 Savings, transitionals, consequential amendments and repeals.

(1) Schedules 10 (consequential amendments) and 11 (transitory provisions and savings) shall have effect.

(2) No letters patent granted or to be granted by the Crown to any person, city, borough or town corporate of any liberty, privilege, or exemption from subsidies, tolls, taxes, assessments or aids, and no statute which grants any salary, annuity or pension to any person free of any taxes, deductions or assessments, shall be construed or taken to exempt any person, city, borough or town corporate, or any inhabitant of the same, from tax chargeable in pursuance of this Act.

(3) Subject to Schedule 11, the enactments and instruments mentioned in Schedule 12 to this Act are hereby repealed to the extent specified in the third column of that Schedule (but Schedule 12 shall not have effect in relation to any enactment in so far as it has previously been repealed subject to a saving which still has effect on the coming into force of this section).

(4) The provisions of this Part of this Act are without prejudice to the provisions of the [M105]Interpretation Act 1978 as respects the effect of repeals.

Marginal Citations
M105 1978 c. 30.

291 Short title.

This Act may be cited as the Taxation of Chargeable Gains Act 1992.

SCHEDULES

[F444SCHEDULE A1

APPLICATION OF TAPER RELIEF

Textual Amendments

F444 Sch. A1 inserted (with effect in accordance with s. 121(4) of the amending Act) by Finance Act 1998 (c. 36), s. 121(2), **Sch. 20**

Introductory

1 (1) Section 2A shall be construed subject to and in accordance with this Schedule.

(2) The different provisions of this Schedule have effect for construing the other provisions of this Schedule, as well as for construing section 2A.

Period for which an asset is held and relevant period of ownership

2 (1) In relation to any gain on the disposal of a business or non-business asset, the period after 5th April 1998 for which the asset had been held at the time of its disposal is the period which—

(a) begins with whichever is the later of 6th April 1998 and the time when the asset disposed of was acquired by the person making the disposal; and

(b) ends with the time of the disposal on which the gain accrued.

(2) Where an asset is disposed of, its relevant period of ownership is whichever is the shorter of—

(a) the period after 5th April 1998 for which the asset had been held at the time of its disposal; and

(b) the period of ten years ending with that time.

(3) The following shall be disregarded for determining when a person is to be treated for the purposes of this paragraph as having acquired an asset, that is to say—

(a) so much of section 73(1)(b) as treats the asset as acquired at a date before 6th April 1965; and

(b) sections 239(2)(b), 257(2)(b) and 259(2)(b).

(4) Where the period after 5th April 1998 for which an asset had been held at the time of its disposal includes any period which, in accordance with any of paragraphs 10 to 12 below **[**F445or paragraph 4 of Schedule 5BA**]**, is a period that does not count for the purposes of taper relief—

(a) the qualifying holding period of the asset shall be treated for the purposes of section 2A as reduced by the length of the period that does not count or, as the case may be, of the aggregate of the periods that do not count; and

(b) the period that does not count or, as the case may be, every such period—

(i) shall be left out of account in computing for the purposes of sub-paragraph (2) above the period of ten years ending with the time of the asset's disposal; and

(ii) shall be assumed not to be comprised in the asset's relevant period of ownership.

(5) Sub-paragraphs (1) to (3) above have effect subject to the provisions of paragraphs 13 to 19 below.

Textual Amendments

F445 Words in Sch. A1 para. 2(4) inserted (27.7.1999) by Finance Act 1999 (c. 16), **s. 72(3)(b)**

Rules for determining whether a gain is a gain on the disposal of a business asset or non-business asset

3 (1) Subject to the following provisions of this Schedule, a chargeable gain accruing to any person on the disposal of any asset is a gain on the disposal of a business asset if that asset was a business asset throughout its relevant period of ownership.

(2) Where—

(a) a chargeable gain accrues to any person on the disposal of any asset,

(b) that gain does not accrue on the disposal of an asset that was a business asset throughout its relevant period of ownership, and

(c) that asset has been a business asset throughout one or more periods comprising part of its relevant period of ownership,

a part of that gain shall be taken to be a gain on the disposal of a business asset and, in accordance with sub-paragraph (4) below, the remainder shall be taken to be a gain on the disposal of a non-business asset.

(3) Subject to the following provisions of this Schedule, where sub-paragraph (2) above applies, the part of the chargeable gain accruing on the disposal of the asset that shall be taken to be a gain on the disposal of a business asset is the part of it that bears the same proportion to the whole of the gain as is borne to the whole of its relevant period of ownership by the aggregate of the periods which—

(a) are comprised in its relevant period of ownership, and

(b) are periods throughout which the asset is to be taken (after applying paragraphs 8 and 9 below) to have been a business asset.

(4) So much of any chargeable gain accruing to any person on the disposal of any asset as is not a gain on the disposal of a business asset shall be taken to be a gain on the disposal of a non-business asset.

(5) Where, by virtue of sub-paragraphs (2) to (4) above, a gain on the disposal of a business asset accrues on the same disposal as a gain on the disposal of a non-business asset—

(a) the two gains shall be treated for the purposes of taper relief as separate gains accruing on separate disposals of separate assets; but

(b) the periods after 5th April 1998 for which each of the assets shall be taken to have been held at the time of their disposal shall be the same and shall be determined without reference to the length of the periods mentioned in sub-paragraph (3)(a) and (b) above.

Conditions for shares to qualify as business assets

4 (1) This paragraph applies, in the case of the disposal of any asset, for determining (subject to the following provisions of this Schedule) whether the asset was a business asset at a time before its disposal when it consisted of, or of an interest in, any shares in a company ("the relevant company").

(2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time the relevant company was a qualifying company by reference to that individual.

(3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time the relevant company was a qualifying company by reference to the trustees of that settlement.

(4) Where the disposal is made by an individual's personal representatives, the asset was a business asset at that time if at that time—

(a) the relevant company was a trading company or the holding company of a trading group; and

(b) the voting rights in that company were exercisable, as to not less than 25 per cent., by the deceased's personal representatives.

(5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64) and that time is not a time when the asset was a business asset by virtue of sub-paragraph (2) above, the asset shall be taken to have been a business asset at that time if at that time—

(a) it was held by the personal representatives of the deceased; and

(b) the conditions in sub-paragraph (4)(a) and (b) above were satisfied.

Conditions for other assets to qualify as business assets

5 (1) This paragraph applies, in the case of the disposal of any asset, for determining (subject to the following provisions of this Schedule) whether the asset was a business asset at a time before its disposal when it was neither shares in a company nor an interest in shares in a company.

(2) Where the disposal is made by an individual, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—

(a) the purposes of a trade carried on at that time by that individual or by a partnership of which that individual was at that time a member;

(b) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to that individual;

(c) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to that individual;

(d) the purposes of any qualifying office or employment to which that individual was at that time required to devote substantially the whole of his time;

(e) the purposes of any office or employment that does not fall within paragraph (d) above but was an office or employment with a trading company in relation to which that individual falls to be treated as having, at that time, been a full-time working officer or employee.

(3) Where the disposal is made by the trustees of a settlement, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—

(a) the purposes of a trade carried on by the trustees of the settlement;

(b) the purposes of a trade carried on at that time by an eligible beneficiary or by a partnership of which an eligible beneficiary was at that time a member;

(c) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to the trustees of the settlement or an eligible beneficiary;

(d) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the trustees of the settlement or an eligible beneficiary;

(e) the purposes of any qualifying office or employment to which an eligible beneficiary was at that time required to devote substantially the whole of his time;

(f) the purposes of any office or employment that does not fall within paragraph (e) above but was an office or employment with a trading company in relation to which an eligible beneficiary falls to be treated as having, at that time, been a full-time working officer or employee.

(4) Where the disposal is made by an individual's personal representatives, the asset was a business asset at that time if at that time it was being used, wholly or partly, for purposes falling within one or more of the following paragraphs—

(a) the purposes of a trade carried on by the deceased's personal representatives;

(b) the purposes of any trade carried on by a company which at that time was a qualifying company by reference to the deceased's personal representatives;

(c) the purposes of any trade carried on by a company which at that time was a member of a trading group the holding company of which was at that time a qualifying company by reference to the deceased's personal representatives.

(5) Where the disposal is made by an individual who acquired the asset as legatee (as defined in section 64) and that time is not a time when the asset was a business asset by virtue of sub-paragraph (2) above, the asset shall be taken to have been a business asset at that time if at that time it was—

(a) being held by the personal representatives of the deceased, and

(b) being used, wholly or partly, for purposes falling within one or more of paragraphs (a) to (c) of sub-paragraph (4) above.

Companies which are qualifying companies

6 (1) The times when a company shall be taken to have been a qualifying company by reference to an individual, the trustees of a settlement or an individual's personal representatives are—

(a) in the case of an individual, those set out in sub-paragraphs (2) and (3) below; and

(b) in the case of the trustees of a settlement, those set out in sub-paragraphs (2) and (4) below; and

(c) in the case of personal representatives, those set out in sub-paragraph (2) below.

(2) A company was a qualifying company by reference to an individual, the trustees of a settlement or personal representatives at any time when both the following conditions were satisfied, that is to say—

(a) the company was a trading company or the holding company of a trading group; and

(b) the voting rights in that company were exercisable, as to not less than 25 per cent., by that individual or, as the case may be, the trustees of the settlement or the personal representatives.

(3) A company was also a qualifying company by reference to an individual at any time when all of the following conditions were satisfied, that is to say—

(a) the company was a trading company or the holding company of a trading group;

(b) the voting rights in that company were exercisable, as to not less than 5 per cent., by that individual; and

(c) that individual was a full-time working officer or employee of that company or of a company which at the time had a relevant connection with that company.

(4) A company was also a qualifying company by reference to the trustees of a settlement at any time when all the following conditions were satisfied, that is to say—

(a) the company was a trading company or the holding company of a trading group;

(b) the voting rights in that company were exercisable, as to not less than 5 per cent., by the trustees of that settlement; and

(c) an eligible beneficiary was a full-time working officer or employee of that company or of a company which at the time had a relevant connection with that company.

Persons who are eligible beneficiaries

7 (1) An eligible beneficiary, in relation to an asset comprised in a settlement and a time, is any individual having at that time a relevant interest in possession under the settlement in either—

(a) the whole of the settled property; or

(b) a part of the settled property that is or includes that asset.

(2) In this paragraph "relevant interest in possession", in relation to property comprised in a settlement, means any interest in possession under that settlement other than—

(a) a right under that settlement to receive an annuity; or

(b) a fixed-term entitlement.

(3) In sub-paragraph (2) above "fixed-term entitlement", in relation to property comprised in a settlement, means any interest under that settlement which is limited to a term that is fixed and is not a term at the end of which the person with that interest will become entitled to the property.

Cases where there are non-qualifying beneficiaries

8 (1) This paragraph applies in the case of a disposal of an asset by the trustees of a settlement where the asset's relevant period of ownership is or includes a period ("a sharing period") throughout which—

(a) the asset was a business asset by reference to one or more eligible beneficiaries;

(b) the asset would not otherwise have been a business asset; and

(c) there is a non-qualifying part of the relevant income, or there would be if there were any relevant income for that period.

(2) The period throughout which the asset disposed of is to be taken to have been a business asset shall be determined as if the relevant fraction of every sharing period were a period throughout which the asset was not a business asset.

(3) In sub-paragraph (2) above "the relevant fraction", in relation to any sharing period, means the fraction which represents the proportion of relevant income for that period which is, or (if there were such income) would be, a non-qualifying part of that income.

(4) Where a sharing period is a period in which the proportion mentioned in sub-paragraph (3) above has been different at different times, this paragraph shall require a separate relevant fraction to be determined for, and applied to, each part of that period for which there is a different proportion.

(5) For the purposes of this paragraph the non-qualifying part of any relevant income for any period is so much of that income for that period as is or, as the case may be, would be—

(a) income to which no eligible beneficiary has any entitlement; or

(b) income to which a non-qualifying eligible beneficiary has an entitlement.

(6) In sub-paragraph (5) above "non-qualifying eligible beneficiary", in relation to a period, means an eligible beneficiary who is not a beneficiary by reference to whom (if he were the only beneficiary) the asset disposed of would be a business asset throughout that period.

(7) In this paragraph "relevant income" means income from the part of the settled property comprising the asset disposed of.

Cases where an asset is used at the same time for different purposes

9 (1) This paragraph applies in the case of a disposal by any person of an asset where the asset's relevant period of ownership is or includes a period ("a mixed-use period") throughout which the asset—

(a) was a business asset by reference to its use for purposes mentioned in paragraph 5(2) to (5) above; but

(b) was, at the same time, being put to a non-qualifying use.

(2) The period throughout which the asset disposed of is to be taken to have been a business asset shall be determined as if the relevant fraction of every mixed-use period were a period throughout which the asset was not a business asset.

(3) In sub-paragraph (2) above "the relevant fraction", in relation to any mixed-use period, means the fraction which represents the proportion of the use of the asset during that period that was a non-qualifying use.

(4) Where both this paragraph and paragraph 8 above apply in relation to the whole or any part of a period—

(a) effect shall be given to that paragraph first; and

(b) further reductions by virtue of this paragraph in the period for which the asset disposed of is taken to have been a business asset shall be made in respect of only the relevant part of any non-qualifying use.

(5) In sub-paragraph (4) above the reference to the relevant part of any non-qualifying use is a reference to the proportion of that use which is not a use to which a non-qualifying part of any relevant income is attributable.

(6) Where a mixed-use period is a period in which—

(a) the proportion mentioned in sub-paragraph (3) above has been different at different times, or

(b) different attributions have to be made for the purposes of sub-paragraphs (4) and (5) above for different parts of the period,

this paragraph shall require a separate relevant fraction to be determined for, and applied to, each part of the period for which there is a different proportion or attribution.

(7) In this paragraph—

"non-qualifying use", in relation to an asset, means any use of the asset for purposes which are not purposes in respect of which the asset would fall to be treated as a business asset at the time of its use; and

"non-qualifying part" and "relevant income" have the same meanings as in paragraph 8 above.

Periods of limited exposure to fluctuations in value not to count

10 (1) Where, in the case of any asset disposed of ("the relevant asset"), the period after 5th April 1998 for which that asset had been held at the time of its disposal is or includes a period during which—

(a) the person making the disposal, or

(b) a relevant predecessor of his,

had limited exposure to fluctuations in the value of the asset, the period during which that person or predecessor had that limited exposure shall not count for the purposes of taper relief.

(2) The times when a person shall be taken for the purposes of this paragraph to have had such limited exposure in the case of the relevant asset shall be all the times while he held that asset when a transaction entered into at any time by him, or by a relevant predecessor of his, had the effect that he—

(a) was not exposed, or not exposed to any substantial extent, to the risk of loss from fluctuations in the value of the relevant asset; and

(b) was not able to enjoy, or to enjoy to any substantial extent, any opportunities to benefit from such fluctuations.

(3) The transactions referred to in sub-paragraph (2) above do not include—

(a) any insurance policy which the person in question might reasonably have been expected to enter into and which is insurance against the loss of the relevant asset or against damage to it, or against both; or

(b) any transaction having effect in relation to fluctuations in the value of the relevant asset so far only as they are fluctuations resulting from fluctuations in the value of foreign currencies.

(4) In this paragraph "relevant predecessor"—

(a) in relation to a person disposing of an asset, means any person other than the person disposing of it who held that asset at a time falling in the period which is taken to be the whole period for which it had been held at the time of its disposal; and

(b) in relation to a relevant predecessor of a person disposing of an asset, means any other relevant predecessor of that person.

(5) In sub-paragraph (4) above, the reference, in relation to an asset, to the whole period for which it had been held at the time of its disposal is a reference to the period that would be given for that asset by paragraph 2(1) above if, in paragraph (a), the words "whichever is the later of 6th April 1998 and" were omitted.

Periods of share ownership not to count where there is a change of activity by the company

11 (1) This paragraph applies where—

(a) there is a disposal of an asset consisting of shares in a close company; and

(b) the period beginning with the relevant time and ending with the time of the disposal includes at least one relevant change of activity involving that company.

(2) So much of the period after 5th April 1998 for which the asset had been held at the time of its disposal as falls before the time, or latest time, in that period when there was a relevant change of activity involving the close company shall not count for the purposes of taper relief.

(3) Where—

(a) a close company or any of its 51 per cent. subsidiaries has at any time begun to carry on a trade, and

(b) immediately before that time, neither that company nor any of its 51 per cent. subsidiaries was carrying on a trade,

a relevant change of activity involving the close company shall be taken to have occurred at that time.

(4) For the purposes of this paragraph where—

(a) at the time of the disposal of the shares, the close company was carrying on a business of holding investments, and

(b) there has been any occasion falling within—

(i) the period of twelve months ending with that time, or

(ii) the period of twelve months ending with any earlier time after the relevant time,

when the close company was not carrying on that business or when the size of that business was small by comparison with its size at the end of that period,

a relevant change of activity involving the close company shall be taken to have occurred immediately after the latest such occasion before the time of the disposal.

(5) For the purposes of sub-paragraph (4) above the size of any business at any time shall be determined by assuming it to correspond to the aggregate of the amounts and

values given by way of consideration for the assets held at that time for the purposes of the business.

(6) In determining for the purposes of this paragraph whether a close company is at any time carrying on a business of holding investments, and in determining for those purposes the size at any time of such a business—

(a) all the activities of a close company and of all its 51 per cent. subsidiaries shall be taken together as if they were all being carried on by the close company; and

(b) the activities that are included in a business of holding investments shall be taken not to include—

(i) holding shares in a 51 per cent. subsidiary of the company holding the shares;

(ii) making loans to an associated company or to a participator in the company making the loan or in an associated company; or

(iii) placing money on deposit.

(7) In this paragraph—

(a) references to a company's carrying on a trade, or to beginning to carry one on, do not include references to its carrying on or beginning to carry on a trade that is merely incidental to any non-trading activities carried on by that company or another company in the same group of companies; and

(b) references to a business of holding investments include references to a business of making investments.

(8) For the purposes of this paragraph a company is to be treated as another's associated company at any time if at that time, or at another time within one year previously—

(a) one of them has had control of the other; or

(b) both have been under the control of the same person or persons.

(9) In this paragraph—

"51 per cent. subsidiary", in relation to another company, means a company which, in accordance with section 170(7), is an effective 51 per cent. subsidiary of the other company for the purposes of sections 170 to 181; and

"participator", in relation to a company, has the meaning given by section 417(1) of the Taxes Act.

(10) In this paragraph "the relevant time", in relation to the disposal of an asset consisting of shares in a company, means the beginning of the period after 5th April 1998 for which that asset had been held at the time of its disposal.

Periods of share ownership not to count in a case of value shifting

12 (1) This paragraph applies (subject to sub-paragraph (4) below) where—

(a) there is a disposal of an asset consisting of shares in a close company, and

(b) at least one relevant shift of value involving that asset has occurred between the relevant time and the time of the disposal.

(2) So much of the period after 5th April 1998 for which the asset had been held at the time of its disposal as falls before the time, or latest time, in that period at which there was a relevant shift of value involving that asset shall not count for the purposes of taper relief.

(3) For the purposes of this paragraph a relevant shift of value involving any asset shall be taken to have occurred whenever—

(a) a person having control of a close company exercised his control of that company so that value passed into that asset out of a relevant holding; or

(b) effect was given to any other transaction by virtue of which value passed into that asset out of a relevant holding.

(4) A relevant shift of value involving an asset shall be disregarded for the purposes of this paragraph if—

(a) that shift of value is one in which the value passing into that asset out of the relevant holding is insignificant; or

(b) that shift of value took place at a time when the qualifying holding period of the relevant holding was at least as long as the qualifying holding period of that asset.

(5) In sub-paragraphs (3) and (4) above the references to a relevant holding shall be construed, in relation to any case in which value has passed out of one asset into another asset consisting of shares in a company, as a reference to any holding by—

(a) the person who, following the exercise of control or other transaction by virtue of which the value has passed, held the other asset, or

(b) a person connected with him,

of any shares in that company or in a company under the control of the same person or persons as that company.

(6) For the purposes of sub-paragraph (4)(b) above the reference to the qualifying holding period of a holding or other asset at the time when a shift of value takes place shall be taken to be what, in relation to a disposal at that time of that holding or other asset by the person then entitled to dispose of it, would be taken to have been its qualifying holding period for the purposes of section 2A.

(7) In this paragraph references to shares in a company include references to rights over a company.

(8) In this paragraph "the relevant time", in relation to the disposal of an asset consisting of shares in a company, means the beginning of the period after 5th April 1998 for which that asset had been held at the time of its disposal.

Rules for options

13 (1) This paragraph applies where by virtue of section 144—

(a) the grant of an option and the transaction entered into by the grantor in fulfilment of his obligations under the option, or

(b) the acquisition of an option and the transaction entered into by the person exercising the option,

fall to be treated as one transaction.

(2) The time of the disposal of any asset disposed of in pursuance of the transaction shall be the time of the following disposal—

(a) if the option binds the grantor to sell, the disposal made in fulfilment of the grantor's obligations under the option;

(b) if the option binds the grantor to buy, the disposal made to the grantor in consequence of the exercise of the option.

(3) The time of the acquisition of any asset acquired in pursuance of the option, or in consequence of its exercise, shall be the time of the exercise of the option.

(4) Any question whether the asset disposed of or acquired was a business asset at any time shall be determined by reference to the asset to which the option related, and not the option.

Further rules for assets derived from other assets

14 (1) This paragraph applies if, in a case where—

(a) assets have merged,

(b) an asset has divided or otherwise changed its nature, or

(c) different rights or interests in or over any asset have been created or extinguished at different times,

the value of any asset disposed of is derived (through one or more successive events falling within paragraphs (a) to (c) above but not otherwise) from one or more other assets acquired into the same ownership at a time before the acquisition of the asset disposed of.

(2) The asset disposed of shall be deemed for the purposes of this Schedule to have been acquired at the earliest time at which any asset from which its value is derived was acquired into the same ownership.

(3) Any determination of whether the asset disposed of was a business asset at a time when another asset from which its value is derived was in the ownership of the person making the disposal shall be made as if that other asset were the asset disposed of or, as the case may be, were comprised in it.

Special rules for assets transferred between spouses

15 (1) This paragraph applies where a person (“the transferring spouse") has disposed of any asset to another (“the transferee spouse") by a disposal falling within section 58(1).

(2) Paragraph 2 above shall have effect in relation to any subsequent disposal of the asset as if the time when the transferee spouse acquired the asset were the time when the transferring spouse acquired it.

(3) Where for the purposes of paragraph 2 above the transferring spouse would be treated—

(a) in a case where there has been one or more previous disposals falling within section 58(1), by virtue of sub-paragraph (2) above, or by virtue of that sub-paragraph together with any other provision of this Schedule, or

(b) in a case where there has not been such a previous disposal, by virtue of such another provision,

as having acquired the asset at a time other than the time when the transferring spouse did acquire it, the reference in that sub-paragraph to the time when the transferring spouse acquired it shall be read as a reference to the time when for the purposes of that paragraph the transferring spouse is treated as having acquired it.

(4) Where there is a disposal by the transferee spouse, any question whether the asset was a business asset at a time before that disposal shall be determined as if—

(a) in relation to times when the asset was held by the transferring spouse, references in paragraph 5(2) above to the individual by whom the disposal is made included references to the transferring spouse; and

(b) the reference in paragraph 5(5) above to the acquisition of the asset as a legatee by the individual by whom the disposal is made included a reference to its acquisition as a legatee by the transferring spouse.

(5) Where, in the case of any asset, there has been more than one transfer falling within section 58(1) during the period after 5th April 1998 for which the transferee spouse has held it at the time of that spouse's disposal of that asset, sub-paragraph (4) above shall have effect as if a reference, in relation to any time, to the transferring spouse were a reference to the individual who was the transferring spouse in relation to the next disposal falling within section 58(1) to have been made after that time.

Special rules for postponed gains

16 (1) Sub-paragraph (3) below applies where the whole or any part of any gain which—

(a) would (but for any provision of this Act) have accrued on the disposal of any asset, or

(b) would have accrued on any disposal assumed under any enactment to have been made at any time,

falls by virtue of an enactment mentioned in sub-paragraph (2) below to be treated as accruing on or after 6th April 1998 at a time (whether or not the time of a subsequent disposal) which falls after the time of the actual or assumed disposal mentioned in paragraph (a) or (b) above ("the charged disposal").

(2) Those enactments are—

(a) section 10A,

(b) section 116(10),

(c) section 134,

(d) section 154(2) or (4),

(e) Schedule 5B or 5C, or

(f) paragraph 27 of Schedule 15 to the Finance Act 1996 (qualifying indexed securities).

(3) In relation to the gain or part of a gain that is treated as accruing after the time of the charged disposal—

(a) references in this Schedule (except this sub-paragraph) to the disposal on which the gain or part accrues are references to the charged disposal; and

(b) references in this Schedule to the asset disposed of by that disposal are references to the asset that was or would have been disposed of by the charged disposal;

and, accordingly, the end of the period after 5th April 1998 for which that asset had been held at the time of the disposal on which that gain or part accrues shall be deemed to have been the time of the charged disposal.

(4) In relation to any gain that is treated by virtue of—

(a) subsection (1) of section 12, or

(b) subsection (2) of section 279,

as accruing after the time of the disposal from which it accrues, references in this Schedule to the disposal on which the gain accrues, to the asset disposed of on

that disposal and to the time of that disposal shall be construed disregarding that subsection.

(5) It shall be immaterial for the purposes of this paragraph—

(a) that the time of the charged disposal or, as the case may be, the time of the actual disposal from which the gain accrues was before 6th April 1998; and

(b) that the time at which the charged disposal is treated as accruing is postponed on more than one occasion under an enactment specified in sub-paragraph (2) above.

Special rule for property settled by a company

17 (1) No part of any chargeable gain accruing to the trustees of a settlement on the disposal of any asset shall be treated as a gain on the disposal of a business asset if—

(a) the settlor is a company, and

(b) that company has an interest in the settlement at the time of the disposal.

(2) Subject to the following provisions of this paragraph, a company which is a settlor in relation to any settlement shall be regarded as having an interest in a settlement if—

(a) any property which may at any time be comprised in the settlement, or any derived property is, or will or may become, payable to or applicable for the benefit of that company or an associated company; or

(b) that company or an associated company enjoys a benefit deriving directly or indirectly from any property which is comprised in the settlement or any derived property.

(3) This paragraph does not apply unless the settlor or an associated company is within the charge to corporation tax in respect of chargeable gains for the accounting period in which the chargeable gain accrues.

(4) In this paragraph "derived property", in relation to any property, means income from that property or any other property directly or indirectly representing proceeds of, or of income from, that property or income therefrom.

(5) For the purposes of this paragraph a company is to be treated as another's associated company at any time if at that time, or at another time within one year previously—

(a) one of them has had control of the other; or

(b) both have been under the control of the same person or persons.

(6) In this paragraph "settlor" has the meaning given by section 660G(1) and (2) of the Taxes Act.

(7) This paragraph has effect subject to paragraph 20 below.

Special rules for assets acquired in the reconstruction of mutual businesses etc.

18 (1) Where—

(a) shares in a company have been issued under any arrangements for the issue of shares in that company in respect of the interests of the members of a mutual company; and

(b) a person to whom shares were issued under those arrangements falls by virtue of subsection (3) of section 136 to be treated as having exchanged

interests of his as a member of the mutual company for shares issued under those arrangements,

paragraph 2 above shall have effect (notwithstanding that section) as if the time of that person's acquisition of the shares were the time when they were issued to him.

(2) Where—

(a) a registered friendly society has been incorporated under the Friendly Societies Act 1992, and

(b) there has been a change under Schedule 4 to that Act as a result of which a member of the registered society, or of a branch of the registered society, has become a member of the incorporated society or of a branch of the incorporated society,

paragraph 2 above shall have effect (notwithstanding anything in section 217B) in relation to the interests and rights in the incorporated society, or the branch of the incorporated society, which that person had immediately after the change, as if the time of their acquisition by him were the time of the change.

(3) In this paragraph—

"the incorporated society", in relation to the incorporation of a registered friendly society, means the society after incorporation;

"insurance company" has the meaning given by section 96(1) of the Insurance Companies Act 1982;

"mutual company" means—

(a) a mutual insurance company; or

(b) a company of another description carrying on a business on a mutual basis;

"mutual insurance company" means any insurance company carrying on a business without having a share capital;

"the registered society", in relation to the incorporation of a registered friendly society, means the society before incorporation.

Special rule for ancillary trust funds

19 (1) Use of an asset as part of an ancillary trust fund of a member of Lloyd's—

(a) shall not be regarded as a use in respect of which the asset is to be treated as a business asset at any time; but

(b) shall be disregarded in any determination for the purposes of paragraph 9 above of whether it was being put to a non-qualifying use at the same time as it was being used for purposes mentioned in paragraph 5(2) to (5) above.

(2) In this section "ancillary trust fund" has the same meaning as in Chapter III of Part II of the Finance Act 1993.

General rules for settlements

20 (1) Where, in the case of any settlement, the settled property originates from more than one settlor, this Schedule shall have effect as if there were a separate and distinct settlement for the property originating from each settlor, and references in this Schedule to an eligible beneficiary shall be construed accordingly.

(2) Subsections (1) to (5) of section 79 apply for the purposes of this paragraph as they apply for the purposes of that section.

General rule for apportionments under this Schedule

21 Where any apportionment falls to be made for the purposes of this Schedule it shall be made—

(a) on a just and reasonable basis; and

(b) on the assumption that an amount falling to be apportioned by reference to any period arose or accrued at the same rate throughout the period over which it falls to be treated as having arisen or accrued.

Interpretation of Schedule

22 (1) In this Schedule—

"51 per cent. subsidiary" (except in paragraph 11 above) has the meaning given by section 838 of the Taxes Act;

"commercial association of companies" means a company together with such of its associated companies (within the meaning of section 416 of the Taxes Act) as carry on businesses which are of such a nature that the businesses of the company and the associated companies, taken together, may be reasonably considered to make up a single composite undertaking;

"eligible beneficiary" shall be construed in accordance with paragraphs 7 and 20 above;

"full-time working officer or employee", in relation to any company, means an individual who—

(a) is an officer or employee of that company or of that company and one or more other companies with which that company has a relevant connection; and

(b) is required in that capacity to devote substantially the whole of his time to the service of that company, or to the service of those companies taken together;

"group of companies" means a company which has one or more 51 per cent. subsidiaries, together with those subsidiaries;

"holding company" means a company whose business (disregarding any trade carried on by it) consists wholly or mainly of the holding of shares in one or more companies which are its 51 per cent. subsidiaries;

"office" and "employment" have the same meanings as in the Income Tax Acts;

"qualifying office or employment", in relation to any time, means an office or employment with a person who was at that time carrying on a trade;

"qualifying company" shall be construed in accordance with paragraph 6 above;

"relevant period of ownership" shall be construed in accordance with paragraph 2 above;

"shares", in relation to a company, includes any securities of that company;

"trade" means (subject to section 241(3)) anything which—

(a) is a trade, profession or vocation, within the meaning of the Income Tax Acts; and

(b) is conducted on a commercial basis and with a view to the realisation of profits;

"trading company" means a company which is either—

(a) a company existing wholly for the purpose of carrying on one or more trades; or

(b) a company that would fall within paragraph (a) above apart from any purposes capable of having no substantial effect on the extent of the company's activities;

"trading group" means a group of companies the activities of which (if all the activities of the companies in the group are taken together) do not, or not to any substantial extent, include activities carried on otherwise than in the course of, or for the purposes of, a trade; and

"transaction" includes any agreement, arrangement or understanding, whether or not legally enforceable, and a series of transactions.

(2) For the purposes of this Schedule one company has a relevant connection with another company at any time when they are both members of the same group of companies or of the same commercial association of companies.

(3) References in this Schedule to the acquisition of an asset that was provided, rather than acquired, by the person disposing of it are references to its provision.

(4) References in this Schedule, in relation to a part disposal, to the asset disposed of are references to the asset of which there is a part disposal.**]**

SCHEDULE 1

Section 3.

APPLICATION OF EXEMPT AMOUNT IN CASES INVOLVING SETTLED PROPERTY

1 (1) For any year of assessment during the whole or part of which settled property is held on trusts which secure that, during the lifetime of a mentally disabled person or a person in receipt of attendance allowance or of a disability living allowance by virtue of entitlement to the care component at the highest or middle rate—

(a) not less than half of the property which is applied is applied for the benefit of that person, and

(b) that person is entitled to not less than half of the income arising from the property, or no such income may be applied for the benefit of any other person,

section 3(1) to (6) shall apply to the trustees of the settlement as they apply to an individual **[**F446, but with the modifications specified in this paragraph**]**.

(2) The trusts on which settled property is held shall not be treated as falling outside sub-paragraph (1) above by reason only of the powers conferred on the trustees by section 32 of the M106Trustee Act 1925 or section 33 of the M107Trustee Act (Northern Ireland) 1958 (powers of advancement); and the reference in that sub-paragraph to the lifetime of a person shall, where the income from the settled property is held for his benefit on trusts of the kind described in section 33 of the M108Trustee Act 1925 (protective trusts), be construed as a reference to the period during which the income is held on trust for him.

[F447(2A) As they apply by virtue of sub-paragraph (1) above—

(a) section 3(5A) has effect with the omission of paragraph (b), and

(b) section 3(5B) has effect with the omission of the words "or (b)".**]**

(3) In relation to a settlement which is one of 2 or more qualifying settlements comprised in a group, this paragraph shall have effect as if for the references in section 3 to

the exempt amount for the year **[**F448(except the one in section 3(2))**]** there were substituted references to one-tenth of that exempt amount or, if it is more, to such amount as results from dividing the exempt amount for the year by the number of settlements in the group.

(4) For the purposes of sub-paragraph (3) above—

(a) a qualifying settlement is any settlement (other than an excluded settlement) which is made on or after 10th March 1981 and to the trustees of which this paragraph applies for the year of assessment; and

(b) all qualifying settlements in relation to which the same person is the settlor constitute a group.

(5) If, in consequence of 2 or more persons being settlors in relation to it, a settlement is comprised in 2 or more groups comprising different numbers of settlements, sub-paragraph (3) above shall apply to it as if the number by which the exempt amount for the year is to be divided were the number of settlements in the largest group.

(6) In this paragraph—

"mentally disabled person" means a person who by reason of mental disorder within the meaning of the M109Mental Health Act 1983 is incapable of administering his property or managing his affairs;

"attendance allowance" means an allowance under section 64 of the M110Social Security Contributions and Benefits Act 1992 or section 64 of the M111Social Security Contributions and Benefits (Northern Ireland) Act 1992;

"disability living allowance" means a disability living allowance under section 71 of the M112Social Security Contributions and Benefits Act 1992 or section 71 of the M113Social Security Contributions and Benefits (Northern Ireland) Act 1992; and

"settlor" and "excluded settlement" have the same meanings as in paragraph 2 below.

(7) An inspector may by notice require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this paragraph.

Textual Amendments

F446 Words in Sch. 1 para. 1(1) inserted (retrospectively) by Finance Act 2003 (c. 14), Sch. 28 paras. 4(2)(b), **8**

F447 Sch. 1 para. 1(2A) inserted (retrospectively) by Finance Act 2003 (c. 14), Sch. 28 paras. 4(3), **8**

F448 Words in Sch. 1 para. 1(3) inserted (retrospectively) by Finance Act 2003 (c. 14), Sch. 28 paras. 4(4)(b), **8**

Marginal Citations

M106 1925 c. 19.

M107 1958 c. 23 (N.I.).

M108 1925 c. 19.

M109 1983 c. 20.

M110 1992 c. 6.

M111 1992 c. 9.

M112 1992 c. 4.

M113 1992 c. 7.

2 (1) For any year of assessment during the whole or part of which any property is settled property, not being a year of assessment for which paragraph 1(1) above applies, section 3(1) to (6) shall apply to the trustees of a settlement as they apply to an individual but with the following modifications.

(2) In **[**F449section 3(1), (5A), (5B) and (5C)**]** for "the exempt amount for the year" there shall be substituted " one-half of the exempt amount for the year ".

[F450(2A) As they apply by virtue of sub-paragraph (1) above—

(a) section 3(5A) has effect with the omission of paragraph (b), and

(b) section 3(5B) has effect with the omission of the words "or (b)".**]**

(3) Section 3(6) shall apply only to the trustees of a settlement made before 7th June 1978 and, in relation to such trustees, shall have effect with the substitution for "the exempt amount for the year" and "twice the exempt amount for the year" of " one-half of the exempt amount for the year " and " the exempt amount for the year " respectively.

(4) In relation to a settlement which is one of 2 or more qualifying settlements comprised in a group, sub-paragraph (2) above shall have effect as if for the reference to one-half of the exempt amount for the year there were substituted a reference to one-tenth of that exempt amount or, if it is more, to such amount as results from dividing one-half of the exempt amount for the year by the number of settlements in the group.

(5) For the purposes of sub-paragraph (4) above—

(a) a qualifying settlement is any settlement (other than an excluded settlement) which is made after 6th June 1978 and to the trustees of which this paragraph applies for the year of assessment; and

(b) all qualifying settlements in relation to which the same person is the settlor constitute a group.

(6) If, in consequence of 2 or more persons being settlors in relation to it, a settlement is comprised in 2 or more groups comprising different numbers of settlements, sub-paragraph (4) above shall apply to it as if the number by which one-half of the exempt amount for the year is to be divided were the number of settlements in the largest group.

(7) In this paragraph "settlor" has the meaning given by **[**F451section 660G(1) and (2)**]** of the Taxes Act and includes, in the case of a settlement arising under a will or intestacy, the testator or intestate and "excluded settlement" means—

(a) any settlement the trustees of which are not for the whole or any part of the year of assessment treated under section 69(1) as resident and ordinarily resident in the United Kingdom; and

(b) any settlement the property comprised in which—

(i) is held for charitable purposes only and cannot become applicable for other purposes; or

(ii) is held for the purposes of any such scheme or fund as is mentioned in sub-paragraph (8) below.

(8) The schemes and funds referred to in sub-paragraph (7)(b)(ii) above are funds to which section 615(3) of the Taxes Act applies, schemes and funds approved under section 620 or 621 of that Act, sponsored superannuation schemes as defined in section 624 of that Act and exempt approved schemes and statutory schemes as defined in Chapter I of Part XIV of that Act.

(9) An inspector may by notice require any person, being a party to a settlement, to furnish him within such time as he may direct (not being less than 28 days) with such particulars as he thinks necessary for the purposes of this paragraph.

Textual Amendments

F449 Words in Sch. 1 para. 2(2) substituted (retrospectively) by Finance Act 2003 (c. 14), Sch. 28 paras. 5(3)(a), **8**

F450 Sch. 1 para. 2(2A) inserted (retrospectively) by Finance Act 2003 (c. 14), Sch. 28 paras. 5(4), **8**

F451 Words in Sch. 1 para. 2(7) substituted (with effect in accordance with s. 74(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 17 para. 32**

SCHEDULE 2

Section 35.

ASSETS HELD ON 6TH APRIL 1965

Modifications etc. (not altering text)

C196 Sch. 2 modified (retrospective to 11.1.1994) by Finance Act 1994 (c. 9), s. 252(3), **Sch. 24 para. 10**

C197 Sch. 2 modified (19.9.1994) by Coal industry Act 1994 (c. 21), s. 68(4), **Sch. 4 para. 10** (with Sch. 4 para. 14); S.I. 1994/2189, art. 2, Sch.

C198 Sch. 2 modified (24.7.1996) by Broadcasting Act 1996 (c. 55), s. 149(1), **Sch. 7 para. 5** (with Sch. 7 para. 9(1))

PART I

QUOTED SECURITIES

Deemed acquisition at 6th April 1965 value

1 (1) This paragraph applies—

(a) to shares and securities which on 6th April 1965 had quoted market values on a recognised stock exchange, or which had such quoted market values at any time in the period of 6 years ending on 6th April 1965, and

(b) to rights of unit holders in any unit trust scheme the prices of which are published regularly by the managers of the scheme.

(2) For the purposes of this Act it shall be assumed, wherever relevant, that any assets to which this paragraph applies were sold by the owner, and immediately reacquired by him, at their market value on 6th April 1965.

(3) This paragraph shall not apply in relation to a disposal of shares or securities of a company by a person to whom those shares or securities were issued as an employee either of the company or of some other person on terms which restrict his rights to dispose of them.

Restriction of gain or loss by reference to actual cost

2 (1) Subject to paragraph 4 below and section 109(4), paragraph 1(2) above shall not apply in relation to a disposal of assets—

(a) if on the assumption in paragraph 1(2) a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue if paragraph 1(2) did not apply, or

(b) if on the assumption in paragraph 1(2) a loss would so accrue and either a smaller loss or a gain would accrue if paragraph 1(2) did not apply,

and accordingly the amount of the gain or loss accruing on the disposal shall be computed without regard to the preceding provisions of this Schedule except that in a case where this sub-paragraph would otherwise substitute a loss for a gain or a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.

(2) For the purpose of—

(a) identifying shares or securities held on 6th April 1965 with shares or securities previously acquired, and

(b) identifying the shares or securities held on that date with shares or securities subsequently disposed of, and distinguishing them from shares or securities acquired subsequently,

so far as that identification is needed for the purposes of sub-paragraph (1) above, and so far as the shares or securities are of the same class, shares or securities acquired at a later time shall be deemed to be disposed of before shares or securities acquired at an earlier time.

(3) Sub-paragraph (2) above has effect subject to section 105.

3 (1) Where—

(a) a disposal was made out of quoted securities before 20th March 1968, and

(b) by virtue of paragraph 2 of Schedule 7 to the [M114]Finance Act 1965 some of the quoted securities out of which the disposal was made were acquired before 6th April 1965 and some later,

then in computing the gain accruing on any disposal of quoted securities the question of what remained undisposed of on the earlier disposal shall be decided on the footing that paragraph 2 of that Schedule did not apply as respects that earlier disposal.

(2) The rules of identification in paragraph 2(2) above shall apply for the purposes of this paragraph as they apply for the purposes of that paragraph.

Marginal Citations
M114 1965 c. 25.

Election for pooling

4 (1) This paragraph applies in relation to quoted securities as respects which an election under paragraphs 4 to 7 of Schedule 5 to the 1979 Act had not been made before the operative date, within the meaning of Part II of Schedule 13 to the [M115]Finance Act 1982, (so that they do not constitute a 1982 holding within the meaning of

section 109), but does not apply in relation to relevant securities within the meaning of section 108.

(2) If a person so elects, quoted securities covered by the election shall be excluded from paragraph 2 above, so that paragraph 1(2) above is not excluded by that paragraph as respects those securities, and sub-paragraphs (3) to (7) (which re-enact section 65 of the 1979 Act) apply.

(3) Subject to section 105, any number of quoted securities of the same class held by one person in one capacity shall for the purposes of this Act be regarded as indistinguishable parts of a single asset (in this paragraph referred to as a holding) growing or diminishing on the occasions on which additional securities of the class in question are acquired, or some of the securities of the class in question are disposed of.

(4) Without prejudice to the generality of sub-paragraph (3) above, a disposal of quoted securities in a holding, other than the disposal outright of the entire holding, is a disposal of part of an asset and the provisions of this Act relating to the computation of a gain accruing on a disposal of part of an asset shall apply accordingly.

(5) Securities shall not be treated for the purposes of this paragraph as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange, but shall be treated in accordance with this paragraph notwithstanding that they are identified in some other way by the disposal or by the transfer or delivery giving effect to it.

(6) This paragraph shall apply separately in relation to any securities held by a person to whom they were issued as an employee of the company or of any other person on terms which restrict his rights to dispose of them, so long as those terms are in force, and, while applying separately to any such securities, shall have effect as if the owner held them in a capacity other than that in which he holds any other securities of the same class.

(7) Nothing in this paragraph shall be taken as affecting the manner in which the market value of any asset is to be ascertained.

(8) An election made by any person under this paragraph shall be as respects all disposals made by him at any time, including disposals made before the election but after 19th March 1968—

(a) of quoted securities of kinds other than fixed-interest securities and preference shares, or

(b) of fixed-interest securities and preference shares,

and references to the quoted securities covered by an election shall be construed accordingly.

Any person may make both of the elections.

(9) An election under this paragraph shall not cover quoted securities which the holder acquired on a disposal after 19th March 1968 in relation to which either section 58 or 171(1) applies, but this paragraph shall apply to the quoted securities so held if the person who made the original disposal (that is to say the wife or husband of the holder, or the other member of the group of companies) makes an election covering quoted securities of the kind in question.

For the purpose of identifying quoted securities disposed of by the holder with quoted securities acquired by him on a disposal in relation to which either section 58 or

171(1) applies, so far as they are of the same class, quoted securities acquired at an earlier time shall be deemed to be disposed of before quoted securities acquired at a later time.

(10) For the avoidance of doubt it is hereby declared—

(a) that where a person makes an election under this paragraph as respects quoted securities which he holds in one capacity, that election does not cover quoted securities which he holds in another capacity, and

(b) that an election under this paragraph is irrevocable.

(11) An election under this paragraph shall be made by notice to **[**F452an officer of the Board given—

(a) in the case of an election for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the first relevant disposal is made;

(b) in the case of an election for the purposes of corporation tax, not later than the expiration of 2 years from the end of the accounting period in which the first relevant disposal is made; or

(c) in either case, within such further time as the Board may allow.**]**

(12) Subject to paragraph 5 below, in this paragraph the "first relevant disposal", in relation to each of the elections referred to in sub-paragraph (8) of this paragraph, means the first disposal after 19th March 1968 by the person making the election of quoted securities of the kind covered by that election.

(13) All such adjustments shall be made, whether by way of discharge or repayment of tax, or the making of assessments or otherwise, as are required to give effect to an election under this paragraph.

Textual Amendments

F452 Words in Sch. 2 para. 4(11) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 42(2)**

Marginal Citations

M115 1982 c. 39.

Election by principal company of group

5 (1) In the case of companies which at the relevant time are members of a group of companies—

(a) an election under paragraph 4 above by the company which at that time is the principal company of the group shall have effect also as an election by any other company which at that time is a member of the group, and

(b) no election under that paragraph may be made by any other company which at that time is a member of the group.

(2) In this paragraph "the relevant time", in relation to a group of companies, and in relation to each of the elections referred to in paragraph 4(8) above, is the first occasion after 19th March 1968 when any company which is then a member of a group disposes of quoted securities of a kind covered by that election, and for the

purposes of paragraph 4(11) above that occasion is, in relation to the group, "the first relevant disposal".

(3) This paragraph shall not apply in relation to quoted securities of either kind referred to in paragraph 4(8) above which are owned by a company which, in some period after 19th March 1968 and before the relevant time, was not a member of the group if in that period it had made an election under paragraph 4 above in relation to securities of that kind (or was treated by virtue of this paragraph, in relation to another group, as having done so), or had made a disposal of quoted securities of that kind and did not make an election within the time limited by paragraph 4(11) above.

(4) This paragraph shall apply notwithstanding that a company ceases to be a member of the group at any time after the relevant time.

(5) In this paragraph "company" and "group" shall be construed in accordance with section 170(2) to (9).

Pooling at value on 6th April 1965: exchange of securities etc.

6 (1) Where a person who has made only one of the elections under paragraph 4 above disposes of quoted securities which, in accordance with Chapter II of Part IV, are to be regarded as being or forming part of a new holding, the election shall apply according to the nature of the quoted securities disposed of, notwithstanding that under that Chapter the new holding is to be regarded as the same asset as the original holding and that the election would apply differently to the original holding.

(2) Where the election does not cover the disposal out of the new holding but does cover quoted securities of the kind comprised in the original holding, then in computing the gain accruing on the disposal out of the new holding (in accordance with paragraph 3 above) the question of what remained undisposed of on any disposal out of the original holding shall be decided on the footing that paragraph 3 above applied to that earlier disposal.

(3) In the converse case (that is to say, where the election covers the disposal out of the new holding, but does not cover quoted securities of the kind comprised in the original holding) the question of how much of the new holding derives from quoted securities held on 6th April 1965 and how much derives from other quoted securities, shall be decided as it is decided for the purposes of paragraph 3 above.

Underwriters

7 No election under paragraph 4 above shall cover quoted securities comprised in any underwriter's premiums trust fund, or premiums trust fund deposits, or personal reserves, being securities comprised in funds to which section 206 applies.

Interpretation of paragraphs 3 to 7

8 (1) In paragraphs 3 to 7 above—

"quoted securities" means assets to which paragraph 1 above applies,

"fixed interest security" means any security as defined by section 132,

"preference share" means any share the holder whereof has a right to a dividend at a fixed rate, but has no other right to share in the profits of the company.

(2) If and so far as the question whether at any particular time a share was a preference share depends on the rate of dividends payable on or before 5th April 1973, the reference in the definition of "preference share" in sub-paragraph (1) above to a dividend at a fixed rate includes a dividend at a rate fluctuating in accordance with the standard rate of income tax.

PART II

LAND REFLECTING DEVELOPMENT VALUE

9 (1) Subject to paragraph 17(2) of Schedule 11, this Part of this Schedule shall apply in relation to a disposal of an asset which is an interest in land situated in the United Kingdom—

(a) if, but for this paragraph, the expenditure allowable as a deduction in computing the gain accruing on the disposal would include any expenditure incurred before 6th April 1965, and

(b) if the consideration for the asset acquired on the disposal exceeds the current use value of the asset at the time of the disposal, or if any material development of the land has been carried out after 17th December 1973 since the person making the disposal acquired the asset.

(2) For the purposes of this Act, it shall be assumed that, in relation to the disposal and, if it is a part disposal, in relation to any subsequent disposal of the asset which is an interest in land situated in the United Kingdom, that asset was sold by the person making the disposal, and immediately reacquired by him, at its market value on 6th April 1965.

(3) Sub-paragraph (2) above shall apply also in relation to any prior part disposal of the asset and, if tax has been charged, or relief allowed, by reference to that part disposal on a different footing, all such adjustments shall be made, whether by way of assessment or discharge or repayment of tax, as are required to give effect to the provisions of this sub-paragraph.

(4) Sub-paragraph (2) above shall not apply in relation to a disposal of assets—

(a) on the assumption in that sub-paragraph a gain would accrue on that disposal to the person making the disposal and either a smaller gain or a loss would so accrue (computed in accordance with the provisions of this Act) if it did not apply, or

(b) if on the assumption in sub-paragraph (2) a loss would so accrue and either a smaller loss or a gain would accrue if that sub-paragraph did not apply,

and accordingly the amount of the gain or loss accruing on the disposal shall be computed without regard to the provisions of this Schedule except that in a case where this sub-paragraph would otherwise substitute a loss for a gain or a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.

(5) For the purposes of this Part of this Schedule—

(a) "interest in land" means any estate or interest in land, any right in or over land or affecting the use or disposition of land, and any right to obtain such an estate, interest or right from another which is conditional on that other's ability to grant the estate, interest or right in question, except that it does

not include the interest of a creditor (other than a creditor in respect of a rentcharge) whose debt is secured by way of a mortgage, an agreement for a mortgage or a charge of any kind over land, or, in Scotland, the interest of a creditor in a charge or security of any kind over land; and

(b) "land" includes buildings.

10 (1) For the purposes of this Part of this Schedule, the current use value of an interest in land shall be ascertained in accordance with the following provisions of this Part, and in this Part the time as at which current use value is to be ascertained is referred to as "the relevant time".

(2) Subject to the following provisions of this Part of this Schedule, the current use value of an interest in land at the relevant time is the market value of that interest at that time calculated on the assumption that it was at that time, and would continue to be, unlawful to carry out any material development of the land other than any material development thereof which, being authorised by planning permission in force at that time, was begun before that time.

In relation to any material development which was begun before 18th December 1973 this sub-paragraph shall have effect with the omission of the words from "other than" to "before that time".

(3) In this paragraph "planning permission" has the same meaning as in the [M116]Town and Country Planning Act 1990, or, in Scotland, the [M117]Town and Country Planning (Scotland) Act 1972, or, in Northern Ireland, the [M118]Planning (Northern Ireland) Order 1991, and in determining for the purposes of this paragraph what material development of any land was authorised by planning permission at a time when there was in force in respect of the land planning permission granted on an outline application (that is to say, an application for planning permission subject to subsequent approval on any matters), any such development of the land which at that time—

(a) was authorised by that permission without any requirement as to subsequent approval; or

(b) not being so authorised, had been approved in the manner applicable to that planning permission,

but no other material development, shall for those purposes be taken to have been authorised by that permission at that time.

(4) Where the value to be ascertained is the current use value of an interest in land which has been disposed of by way of a part disposal of an asset ("the relevant asset") consisting of an interest in land, the current use value at the relevant time of the interest disposed of shall be the relevant fraction of the current use value of the relevant asset at that time, calculated on the same assumptions as to the lawfulness or otherwise of any material development as fall to be made under this Part in calculating the current use value at that time of the interest disposed of.

(5) For the purposes of sub-paragraph (4) above "the relevant fraction" means that fraction of the sums mentioned in paragraph (6) below which under subsection (2) of section 42 is, or would but for subsection (4) of that section be, allowable as a deduction in computing the amount of the gain accruing on the part disposal.

(6) The sums referred to in sub-paragraph (5) above are the sums which, if the entire relevant asset had been disposed of at the time of the part disposal, would be

allowable by virtue of section 38(1)(a) and (b) as a deduction in computing the gain accruing on that disposal of the relevant asset.

(7) Sub-paragraphs (4) to (6) above shall not apply—

(a) in the case of a disposal of an interest in land by way of a part disposal if, on making the disposal, the person doing so no longer has any interest in the land which is subject to that interest; or

(b) in a case to which the following provisions of this paragraph apply.

(8) In computing any gain accruing to a person on a part disposal of an interest in land resulting under subsection (1) of section 22 from the receipt as mentioned in paragraph (a), (c) or (d) of that subsection of a capital sum, the current use value at the relevant time of the interest out of which the part disposal was made shall be taken to be what it would have been at that time if the circumstances which caused the capital sum to be received had not arisen.

Marginal Citations
M116 1990 c. 8.
M117 1972 c. 52.
M118 S.I. 1991/1220 (N.I.11)

11 (1) The current use value of an interest in land which is either—

(a) a freehold interest which is subject to a lease or an agreement for a lease, or

(b) an interest under a lease or agreement for a lease,

shall be ascertained without regard to any premium required under the lease or agreement for a lease or any sublease, or otherwise under the terms subject to which the lease or sublease was or is to be granted, but with regard to all other rights under the lease or prospective lease (and, for the current use value of an interest under a lease subject to a sublease, under the sublease).

(2) If under sub-paragraph (1) above an interest under a lease or agreement for a lease would have a negative value, the current use value of the interest shall be nil.

(3) If a lease is granted out of any interest in land after 17th December 1973, then, in computing any gain accruing on any disposal of the reversion on the lease made while the lease subsists, the current use value of the reversion at any time after the grant of the lease shall not exceed what would have been at that time the current use value of the interest in the land of the person then owning the reversion if that interest had not been subject to the lease.

(4) In the application of this paragraph to Scotland, "freehold" means the estate or interest of the proprietor of the dominium utile or, in the case of property other than feudal property, of the owner, and "reversion" means the interest of the landlord in property subject to a lease.

12 In computing any gain accruing to a person on a disposal of a lease which is a wasting asset, the current use value of the lease at the time of its acquisition by the person making the disposal shall be the fraction—

of what its current use value at that time would be apart from this paragraph,

where—

A is equal to so much of the expenditure attributable to the lease under section 38(1)(a) and (b) as is not under paragraph 1 of Schedule 8

excluded therefrom for the purposes of the computation of the gain accruing on the disposal, and

B is equal to the whole of the expenditure which would be so attributable to the lease for those purposes apart from the said paragraph 1.

13 (1) In this Part of this Schedule, "material development", in relation to any land, means the making of any change in the state, nature or use of the land, but the doing of any of the following things in the case of any land shall not be taken to involve material development of the land, that is to say—

(a) the carrying out of works for the maintenance, improvement, enlargement or other alteration of any building, so long as the cubic content of the original building is not exceeded by more than one-tenth;

(b) the carrying out of works for the rebuilding, as often as occasion may require, of any building which was in existence at the relevant time, or of any building which was in existence in the period of 10 years immediately preceding the day on which that time falls but was destroyed or demolished before the relevant time, so long as (in either case) the cubic content of the original building is not exceeded by more than one-tenth;

(c) the use of any land for the purposes of agriculture or forestry, the use for any of those purposes of any building occupied together with land so used, and the carrying out on any land so used of any building or other operations required for the purposes of that use;

(d) the carrying out of operations on land for, or the use of land for, the display of an advertisement, announcement or direction of any kind;

(e) the carrying out of operations for, or the use of the land for, car parking, provided that such use shall not exceed 3 years;

(f) in the case of a building or other land which at the relevant time was used for a purpose falling within any class specified in sub-paragraph (4) below or which, being unoccupied at that time, was last used for any such purpose, the use of that building or land for any other purpose falling within the same class;

(g) in the case of a building or other land which at the relevant time was in the occupation of a person by whom it was used as to part only for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content of the part of the building used for that purpose at the relevant time or, as the case may be, one-tenth of the area of the land so used at that time;

(h) in the case of land which at the relevant time was being temporarily used for a purpose other than the purpose for which it was normally used, the resumption of the use of the land for the last-mentioned purpose;

(i) in the case of land which was unoccupied at the relevant time, the use of the land for the purpose for which it was last used before that time.

References in this paragraph to the cubic content of a building are references to that content as ascertained by external measurement.

(2) For the purposes of sub-paragraph (1)(a) and (b)—

(a) where 2 or more buildings are included in a single development the whole of that development may be regarded as a single building, and where 2 or more buildings result from the redevelopment of a single building the new buildings may together be regarded as a single building, but 2 or more

buildings shall not be treated as included in a single development unless they are or were comprised in the same curtilage; and

(b) in determining whether or not the cubic content of the original building has been exceeded by more than one-tenth, the cubic content of the building after the carrying out of the works in question shall be treated as reduced by the amount (if any) by which so much of that cubic content as is attributable to one or more of the matters mentioned in sub-paragraph (3) below exceeds so much of the cubic content of the original building as was attributable to one or more of the matters so mentioned.

(3) The matters referred to in sub-paragraph (2)(b) are the following, that is to say—

(a) means of escape in case of fire;

(b) car-parking or garage space;

(c) accommodation for plant providing heating, air-conditioning or similar facilities.

(4) The classes of purposes mentioned in sub-paragraph (1)(f) are the following—

Class A—Use as a dwelling-house or for the purpose of any activities which are wholly or mainly carried on otherwise than for profit, except use for a purpose falling within Class B, C or E.

Class B—Use as an office or retail shop.

Class C—Use as a hotel, boarding-house or guest-house, or as premises licensed for the sale of intoxicating liquors for consumption on the premises.

Class D—Use for the purpose of any activities wholly or mainly carried on for profit, except—

(a) use as a dwelling-house or for the purposes of agriculture or forestry; and

(b) use for a purpose falling within Class B, C or E.

Class E—Use for any of the following purposes, namely—

(a) the carrying on of any process for or incidental to any of the following purposes, namely—

(i) the making of any article or of any part of any article, or the production of any substance;

(ii) the altering, repairing, ornamenting, finishing, cleaning, washing, packing or canning, or adapting for sale, or breaking up or demolishing of any article; or

(iii) without prejudice to (i) or (ii) above, the getting, dressing or treatment of minerals,

being a process carried on in the course of a trade or business other than agriculture or forestry, but excluding any process carried on at a dwelling-house or retail shop;

(b) storage purposes (whether or not involving use as a warehouse or repository) other than storage purposes ancillary to a purpose falling within Class B or C.

14 (1) For the purposes of this Part, material development shall be taken to be begun on the earliest date on which any specified operation comprised in the material development is begun.

(2) In this paragraph "specified operation" means any of the following, that is to say—

(a) any work of construction in the course of the erection of a building;

(b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;

(c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in (b) above;

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land.

(3) Subject to sub-paragraph (4) below, material development shall for the purposes of this Part of this Schedule not be treated as carried out after a particular date if it was begun on or before that date.

(4) If, in the case of any land—

(a) material development thereof was begun on or before 17th December 1973 but was not completed on or before that date, and

(b) the development was on that date to any extent not authorised by planning permission (within the meaning of paragraph 10(3) above) then in force,

then, for the purposes of this Part of this Schedule, so much of the development carried out after that date as was not so authorised on that date shall be treated as begun on the earliest date after 17th December 1973 on which any specified operation comprised therein is begun, and shall accordingly be treated as material development of the land carried out after 17th December 1973.

15 In this Part of this Schedule, unless the context otherwise requires—

"agriculture" includes horticulture, fruit growing, seed growing, dairy farming, the keeping and breeding of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly;

"article" means an article of any description;

"building" includes part of a building and references to a building may include references to land occupied therewith and used for the same purposes;

"forestry" includes afforestation;

"minerals" includes all minerals and substances in or under land of a kind ordinarily worked for removal by underground or surface working;

"retail shop" includes any premises of a similar character where retail trade or business (including repair work) is carried on;

"substance" means any natural or artificial substance or material, whether in solid or liquid form or in the form of a gas or vapour.

PART III

OTHER ASSETS

Apportionment by reference to straightline growth of gain or loss over period of ownership

16 (1) This paragraph applies subject to Parts I and II of this Schedule.

(2) On the disposal of assets by a person whose period of ownership began before 6th April 1965 only so much of any gain accruing on the disposal as is under this

paragraph to be apportioned to the period beginning with 6th April 1965 shall be a chargeable gain.

(3) Subject to the following provisions of this Schedule, the gain shall be assumed to have grown at a uniform rate from nothing at the beginning of the period of ownership to its full amount at the time of the disposal so that, calling the part of that period before 6th April 1965, P, and the time beginning with 6th April 1965 and ending with the time of the disposal T, the fraction of the gain which is a chargeable gain is—

$$\frac{T}{P+\mathrm{T.}}$$

(4) If any of the expenditure which is allowable as a deduction in the computation of the gain is within section 38(1)(b)—

(a) the gain shall be attributed to the expenditure, if any, allowable under section 38(1)(a) as one item of expenditure, and to the respective items of expenditure under section 38(1)(b) in proportion to the respective amounts of those items of expenditure,

(b) sub-paragraph (3) of this paragraph shall apply to the part of the gain attributed to the expenditure under section 38(1)(a),

(c) each part of the gain attributed to the items of expenditure under section 38(1)(b) shall be assumed to have grown at a uniform rate from nothing at the time when the relevant item of expenditure was first reflected in the value of the asset to the full amount of that part of the gain at the time of the disposal,

so that, calling the respective proportions of the gain E(0), E(1), E(2) and so on (so that they add up to unity) and calling the respective periods from the times when the items under section 38(1)(b) were reflected in the value of the asset to 5th April 1965 P(1), P(2) and so on, and employing also the abbreviations in sub-paragraph (3) above, the fraction of the gain which is a chargeable gain is—

$$E(0)\frac{T}{P+T}+E(1)\frac{T}{P(1)+T}+E(2)\frac{T}{P(2)+T}\text{andsoon.}$$

(5) In a case within sub-paragraph (4) above where there is no initial expenditure (that is no expenditure under section 38(1)(a)) or that initial expenditure is, compared with any item of expenditure under section 38(1)(b), disproportionately small having regard to the value of the asset immediately before the subsequent item of expenditure was incurred, the part of the gain which is not attributable to the enhancement of the value of the asset due to any item of expenditure under section 38(1)(b) shall be deemed to be attributed to expenditure incurred at the beginning of the period of ownership and allowable under section 38(1)(a), and the part or parts of the gain attributable to expenditure under section 38(1)(b) shall be reduced accordingly.

(6) The beginning of the period over which a gain, or part of a gain, is under sub-paragraphs (3) and (4) above to be treated as growing shall not be earlier than 6th April 1945, and this sub-paragraph shall have effect notwithstanding any provision in this Schedule or elsewhere in this Act.

(7) If in pursuance of section 42 an asset's market value at a date before 6th April 1965 is to be ascertained, sub-paragraphs (3) to (5) above shall have effect as if that asset had been on that date sold by the owner, and immediately reacquired by him, at that market value.

(8) If in pursuance of section 42 an asset's market value at a date on or after 6th April 1965 is to be ascertained sub-paragraphs (3) to (5) above shall have effect as if—

(a) the asset on that date had been sold by the owner, and immediately reacquired by him, at that market value, and

(b) accordingly, the computation of any gain on a subsequent disposal of that asset shall be computed—

(i) by apportioning in accordance with this paragraph the gain or loss over a period ending on that date (the date of the part disposal), and

(ii) by bringing into account the entire gain or loss over the period from the date of the part disposal to the date of subsequent disposal.

(9) For the purposes of this paragraph the period of ownership of an asset shall, where under section 43 account is to be taken of expenditure in respect of an asset from which the asset disposed of was derived, or where it would so apply if there were any relevant expenditure in respect of that other asset, include the period of ownership of that other asset.

(10) If under this paragraph part only of a gain is a chargeable gain, the fraction in section 223(2) shall be applied to that part instead of to the whole of the gain.

Election for valuation at 6th April 1965

17 (1) If the person making a disposal so elects, paragraph 16 above shall not apply in relation to that disposal and it shall be assumed, both for the purposes of computing the gain accruing to that person on the disposal, and for all other purposes both in relation to that person and other persons, that the assets disposed of, and any assets of which account is to be taken in relation to the disposal under section 43, being assets which were in the ownership of that person on 6th April 1965, were on that date sold, and immediately reacquired, by him at their market value on 6th April 1965.

(2) Sub-paragraph (1) above shall not apply in relation to a disposal of assets if on the assumption in that sub-paragraph a loss would accrue on that disposal to the person making the disposal and either a smaller loss or a gain would accrue if sub-paragraph (1) did not apply, but in a case where this sub-paragraph would otherwise substitute a gain for a loss it shall be assumed, in relation to the disposal, that the relevant assets were sold by the owner, and immediately reacquired by him, for a consideration such that, on the disposal, neither a gain nor a loss accrued to the person making the disposal.

The displacement of sub-paragraph (1) above by this sub-paragraph shall not be taken as bringing paragraph 16 above into operation.

(3) An election under this paragraph shall be made by notice to **[**F453an officer of the Board given—

(a) in the case of an election for the purposes of capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the disposal is made;

(b) in the case of an election for the purposes of corporation tax, within 2 years from the end of the accounting period in which the disposal is made; or

(c) in either case, within such further time as the Board may by notice allow.**]**

(4) For the avoidance of doubt it is hereby declared that an election under this paragraph is irrevocable.

(5) An election may not be made under this paragraph as respects, or in relation to, an asset the market value of which at a date on or after 6th April 1965, and before the date of the disposal to which the election relates, is to be ascertained in pursuance of section 42.

Textual Amendments

F453 Words in Sch. 2 para. 17(3) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 42(3)**

Unquoted shares, commodities etc.

18 (1) This paragraph has effect as respects shares held by any person on 6th April 1965 other than quoted securities within the meaning of paragraph 8 above and shares as respects which an election is made under paragraph 17 above.

(2) For the purpose of—

(a) identifying the shares so held on 6th April 1965 with shares previously acquired, and

(b) identifying the shares so held on that date with shares subsequently disposed of, and distinguishing them from shares acquired subsequently,

so far as the shares are of the same class, shares bought at a later time shall be deemed to have been disposed of before shares bought at an earlier time.

(3) Sub-paragraph (2) above has effect subject to section 105.

(4) Shares shall not be treated for the purposes of this paragraph as being of the same class unless if dealt with on a recognised stock exchange they would be so treated, but shall be treated in accordance with this paragraph notwithstanding that they are identified in a different way by a disposal or by the transfer or delivery giving effect to it.

(5) This paragraph, without sub-paragraph (4), shall apply in relation to any assets, other than shares, which are of a nature to be dealt with without identifying the particular assets disposed of or acquired.

Reorganisation of share capital, conversion of securities etc.

19 (1) For the purposes of this Act, it shall be assumed that any shares or securities held by a person on 6th April l965 (identified in accordance with paragraph 18 above) which, in accordance with Chapter II of Part IV, are to be regarded as being or forming part of a new holding were sold and immediately reacquired by him on 6th April 1965 at their market value on that date.

(2) If, at any time after 5th April 1965, a person comes to have, in accordance with Chapter II of Part IV, a new holding, paragraph 16(3) to (5) above shall have effect as if—

(a) the new holding had at that time been sold by the owner, and immediately reacquired by him, at its market value at that time, and

(b) accordingly, the amount of any gain on a disposal of the new holding or any part of it shall be computed—

(i) by apportioning in accordance with paragraph 16 above the gain or loss over a period ending at that time, and

(ii) by bringing into account the entire gain or loss over the period from that time to the date of the disposal.

(3) This paragraph shall not apply in relation to a reorganisation of a company's share capital if the new holding differs only from the original shares in being a different number, whether greater or less, of shares of the same class as the original shares.

PART IV

MISCELLANEOUS

Capital allowances

20 If under any provision in this Schedule it is to be assumed that any asset was on 6th April 1965 sold by the owner, and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by the owner in providing the asset, and so made for the year 1965-66 or for any subsequent year of assessment, as if it were made in respect of the expenditure which, on that assumption, was incurred by him in reacquiring the asset on 7th April 1965.

Assets transferred to close companies

21 (1) This paragraph has effect where—

(a) at any time, including a time before 7th April 1965, any of the persons having control of a close company, or any person who is connected with a person having control of a close company, has transferred assets to the company, and

(b) paragraph 16 above applies in relation to a disposal by one of the persons having control of the company of shares or securities in the company, or in relation to a disposal by a person having, up to the time of disposal, a substantial holding of shares or securities in the company, being in either case a disposal after the transfer of the assets.

(2) So far as the gain accruing to the said person on the disposal of the shares is attributable to a profit on the assets so transferred, the period over which the gain is to be treated under paragraph 16 above as growing at a uniform rate shall begin with the time when the assets were transferred to the company, and accordingly a part of a gain attributable to a profit on assets transferred on or after 6th April 1965 shall all be a chargeable gain.

(3) This paragraph shall not apply where a loss, and not a gain, accrues on the disposal.

Husbands and wives

22 Where section 58 is applied in relation to a disposal of an asset by a man to his wife, or by a man's wife to him, then in relation to a subsequent disposal of the asset (not within that section) the one making the disposal shall be treated for the purposes of this Schedule as if the other's acquisition or provision of the asset had been his or her acquisition or provision of it.

Compensation and insurance money

23 Where section 23(4)(a) applies to exclude a gain which, in consequence of this Schedule, is not all chargeable gain, the amount of the reduction to be made under section 23(4)(b) shall be the amount of the chargeable gain and not the whole amount of the gain; and in section 23(5)(b) for the reference to the amount by which the gain is reduced under section 23(5)(a) there shall be substituted a reference to the amount by which the chargeable gain is proportionately reduced under section 23(5)(a).

SCHEDULE 3

Section 35.

ASSETS HELD ON 31ST MARCH 1982

Previous no gain/no loss disposals

1 (1) Where—

(a) a person makes a disposal, not being a no gain/no loss disposal, of an asset which he acquired after 31st March 1982, and

(b) the disposal by which he acquired the asset and any previous disposal of the asset after 31st March 1982 was a no gain/no loss disposal,

he shall be treated for the purposes of section 35 as having held the asset on 31st March 1982.

(2) For the purposes of this paragraph a no gain/no loss disposal is one on which by virtue of any of the enactments specified in section 35(3)(d) neither a gain nor a loss accrues to the person making the disposal.

2 (1) Sub-paragraph (2) below applies where a person makes a disposal of an asset acquired by him on or after 6th April 1988 in circumstances in which section 58 or 171 applied.

(2) Where this sub-paragraph applies—

(a) an election under section 35(5) by the person making the disposal shall not cover the disposal, but

(b) the making of such an election by the person from whom the asset was acquired shall cause the disposal to fall outside subsection (3) of that section (so that subsection (2) of that section is not excluded by it) whether or not the person making the disposal makes such an election.

(3) Where the person from whom the asset was acquired by the person making the disposal himself acquired it on or after 6th April 1988 in circumstances in which section 58 or 171 applied, an election made by him shall not have the effect described in sub-paragraph (2)(b) above but an election made by—

(a) the last person by whom the asset was acquired after 5th April 1988 otherwise than in such circumstances, or

(b) if there is no such person, the person who held the asset on 5th April 1988,

shall have that effect.

Capital allowances

3 If under section 35 it is to be assumed that any asset was on 31st March 1982 sold by the person making the disposal and immediately reacquired by him, sections 41 and 47 shall apply in relation to any capital allowance or renewals allowance made in respect of the expenditure actually incurred by him in providing the asset as if it were made in respect of expenditure which, on that assumption, was incurred by him in reacquiring the asset on 31st March 1982.

Part disposals etc.

4 (1) Where, in relation to a disposal to which section 35(2) applies, section 42 has effect by reason of an earlier disposal made after 31st March 1982 and before 6th April 1988, the sums to be apportioned under section 42 shall for the purposes of the later disposal be ascertained on the assumption stated in section 35(2).

(2) In any case where—

(a) subsection (2) of section 35 applies in relation to the disposal of an asset,

(b) if that subsection did not apply, section 23(2), 122(4), 133(4) or 244 would operate to disallow expenditure as a deduction in computing a gain accruing on the disposal, and

(c) the disallowance would be attributable to the reduction of the amount of the consideration for a disposal made after 31st March 1982 but before 6th April 1988,

the amount allowable as a deduction on the disposal shall be reduced by the amount which would be disallowed if section 35(2) did not apply.

Assets derived from other assets

5 Section 35 shall have effect with the necessary modifications in relation to a disposal of an asset which on 31st March 1982 was not itself held by the person making the disposal, if its value is derived from another asset of which account is to be taken in relation to the disposal under section 43.

Apportionment of pre-1965 gains and losses

6 In a case where because of paragraph 16 of Schedule 2 only part of a gain or loss is a chargeable gain or allowable loss, section 35(3)(a) and (b) shall have effect as if the amount of the gain or loss that would accrue if subsection (2) did not apply were equal to that part.

Elections under section section 35(5): excluded disposals

7 (1) An election under section 35(5) shall not cover disposals such as are specified in sub-paragraph (2) below.

(2) The disposals mentioned in sub-paragraph (1) above are disposals of, or of an interest in—

(a) plant or machinery,

(b) an asset which the person making the disposal has at any time held for the purposes of or in connection with—

(i) a trade consisting of the working of a source of mineral deposits, or

(ii) where a trade involves (but does not consist of) such working, the part of the trade which involves such working, or

(c) a licence under **[**F454Part I of the Petroleum Act 1998**]** or the M119Petroleum (Production) Act (Northern Ireland) 1964; or

(d) shares which, on 31st March 1982, were unquoted and derived their value, or the greater part of their value, directly or indirectly from oil exploration or exploitation assets situated in the United Kingdom or a designated area or from such assets and oil exploration or exploitation rights taken together;

but a disposal does not fall within paragraph (a) or (b) above unless a capital allowance in respect of any expenditure attributable to the asset has been made to the person making the disposal or would have been made to him had he made a claim.

(3) For the purposes of sub-paragraph (2)(d) above,—

(a) "shares" includes stock and any security, as defined in section 254(1) of the Taxes Act; and

(b) shares (as so defined) were unquoted on 31st March 1982 if, on that date, they were neither quoted on a recognised stock exchange nor dealt in on the Unlisted Securities Market;

but nothing in this paragraph affects the operation, in relation to such unquoted shares, of sections 126 to 130.

(4) In sub-paragraph (2)(d) above—

"designated area" means an area designated by Order in Council under section 1(7) of the M120Continental Shelf Act 1964;

"oil exploration or exploitation assets" shall be construed in accordance with sub-paragraphs (5) and (6) below; and

"oil exploration or exploitation rights" means rights to assets to be produced by oil exploration or exploitation activities (as defined in sub-paragraph (6) below) or to interests in or to the benefit of such assets.

(5) For the purposes of sub-paragraph (2)(d) above an asset is an oil exploration or exploitation asset if either—

(a) it is not a mobile asset and is being or has at some time been used in connection with oil exploration or exploitation activities carried on in the United Kingdom or a designated area; or

(b) it is a mobile asset which has at some time been used in connection with oil exploration or exploitation activities so carried on and is dedicated to an oil field in which the company whose shares are disposed of by the disposal, or a person connected with that company, is or has been a participator;

and, subject to sub-paragraph (6) below, expressions used in paragraphs (a) and (b) above have the same meaning as if those paragraphs were included in Part I of the M121Oil Taxation Act 1975.

(6) In the preceding provisions of this paragraph "oil exploration or exploitation activities" means activities carried on in connection with—

(a) the exploration of land (including the seabed and subsoil) in the United Kingdom or a designated area, as defined in sub-paragraph (4) above, with a view to searching for or winning oil; or

(b) the exploitation of oil found in any such land;

and in this sub-paragraph "oil" has the same meaning as in Part I of the [M122]Oil Taxation Act 1975.

(7) Where the person making the disposal acquired the asset on a no gain/no loss disposal, the references in sub-paragraph (2) above to that person are references to the person making the disposal, the person who last acquired the asset otherwise than on a no gain/no loss disposal or any person who subsequently acquired the asset on such a disposal.

(8) In this paragraph—

(a) "source of mineral deposits" shall be construed in accordance with section 121 of the 1990 Act, and

(b) references to a no gain/no loss disposal shall be construed in accordance with paragraph 1 above.

Textual Amendments

F454 Words in Sch. 3 para. 7(2)(c) substituted (15.2.1999) by Petroleum Act 1998 (c. 17), s. 52(4), **Sch. 4 para. 32(4)** (with Sch. 3); S.I. 1999/161, art. 2(1)

Marginal Citations

M119 1964 c. 28 (N.I.).
M120 1964 c. 29.
M121 1975 c. 22.
M122 1975 c. 22.

Elections under section 35(5): groups of companies

8 (1) A company may not make an election under section 35(5) at a time when it is a member but not the principal company of a group unless the company did not become a member of the group until after the relevant time.

(2) Subject to sub-paragraph (3) below, an election under section 35(5) by a company which is the principal company of a group shall have effect also as an election by any other company which at the relevant time is a member of the group.

(3) Sub-paragraph (2) above shall not apply in relation to a company which, in some period after 5th April 1988 and before the relevant time, is not a member of the group if—

(a) during that period the company makes a disposal to which section 35 applies, and

(b) the period during which an election under subsection (5) of that section could be made expires without such an election having been made.

(4) Sub-paragraph (2) above shall apply in relation to a company notwithstanding that the company ceases to be a member of the group at any time after the relevant time except where—

(a) the company is an outgoing company in relation to the group, and

(b) the election relating to the group is made after the company ceases to be a member of the group.

(5) In relation to a company which is the principal company of a group the reference in section 35(6) to the first relevant disposal is a reference to the first disposal to which that section applies by a company which is—

(a) a member of the group but not an outgoing company in relation to the group, or

(b) an incoming company in relation to the group.

9 (1) In paragraph 8 above "the relevant time", in relation to a group of companies, is—

(a) the first time when any company which is then a member of the group, and is not an outgoing company in relation to the group, makes a disposal to which section 35 applies,

(b) the time immediately following the first occasion when a company which is an incoming company in relation to the group becomes a member of the group,

(c) the time when an election is made by the principal company,

whichever is earliest.

(2) In paragraph 8 above and this paragraph—

"incoming company", in relation to a group of companies, means a company which—

(a) makes its first disposal to which section 35 applies at a time when it is not a member of the group, and

(b) becomes a member of the group before the end of the period during which an election under section 35(5) could be made in relation to it and at a time when no such election has been made, and

"outgoing company", in relation to a group of companies, means a company which ceases to be a member of the group before the end of the period during which an election under section 35(5) could be made in relation to it and at a time when no such election has been made.

(3) Section 170 shall have effect for the purposes of paragraph 8 above and this paragraph as for those of sections 170 to 181.

SCHEDULE 4

Section 36.

DEFERRED CHARGES ON GAINS BEFORE 31ST MARCH 1982

Reduction of deduction or gain

1 Where this Schedule applies—

(a) in a case within paragraph 2 below, the amount of the deduction referred to in that paragraph, and

(b) in a case within paragraph 3 or 4 below, the amount of the gain referred to in that paragraph,

shall be one half of what it would be apart from this Schedule.

Charges rolled-over or held-over

2 (1) Subject to sub-paragraphs (2) to (4) below, this Schedule applies on a disposal, not being a no gain/no loss disposal, of an asset if—

(a) the person making the disposal acquired the asset after 31st March 1982,

(b) a deduction falls to be made by virtue of any of the enactments specified in sub-paragraph (5) below from the expenditure which is allowable in computing the amount of any gain accruing on the disposal, and

(c) the deduction is attributable (whether directly or indirectly and whether in whole or in part) to a chargeable gain accruing on the disposal before 6th April 1988 of an asset acquired before 31st March 1982 by the person making that disposal.

(2) This Schedule does not apply where, by reason of the previous operation of this Schedule, the amount of the deduction is less than it otherwise would be.

(3) This Schedule does not apply if the amount of the deduction would have been less had relief by virtue of a previous application of this Schedule been duly claimed.

(4) Where—

(a) the asset was acquired on or after 19th March 1991,

(b) the deduction is partly attributable to a claim by virtue of section 154(4), and

(c) the claim applies to the asset,

this Schedule does not apply by virtue of this paragraph.

(5) The enactments referred to in sub-paragraph (1) above are sections 23(4) and (5), 152, 162, 165 and 247 of this Act and section 79 of the [M123]Finance Act 1980.

Marginal Citations
M123 1980 c. 48.

3 (1) This paragraph applies where this Schedule would have applied on a disposal but for paragraph 2(4) above.

(2) This Schedule applies on the disposal if paragraph 4 below would have applied had—

(a) section 154(2) continued to apply to the gain carried forward as a result of the claim by virtue of section 154(4), and

(b) the time of the disposal been the time when that gain was treated as accruing by virtue of section 154(2).

Postponed charges

4 (1) Subject to sub-paragraphs (3) to (5) below, this Schedule applies where—

(a) a gain is treated as accruing by virtue of any of the enactments specified in sub-paragraph (2) below, and

(b) that gain is attributable (whether directly or indirectly and whether in whole or in part) to the disposal before 6th April 1988 of an asset acquired before 31st March 1982 by the person making that disposal.

(2) The enactments referred to in sub-paragraph (1) above are sections 116(10) and (11), 134, 140, 154(2), 168 (as modified by section 67(6)), 178(3), 179(3) and 248(3).

(3) Where a gain is treated as accruing by virtue of section 178(3) or 179(3), this Schedule applies only if the asset was acquired by the chargeab1e company (within the meaning of section 178 or 179) before 6th April 1988.

(4) Where a gain is treated as accruing in consequence of an event, this Schedule does not apply if—

(a) the gain is attributable (whether directly or indirectly and whether in whole or part) to the disposal of an asset on or after 6th April 1988, or

(b) the amount of the gain would have been less had relief by virtue of a previous application of this Schedule been duly claimed.

(5) None of sections 134, 140(4), 154(2) and 248(3) shall apply in consequence of an event occurring on or after 6th April 1988 if its application would be directly attributable to the disposal of an asset on or before 31st March 1982.

Previous no gain/no loss disposals

5 Where—

(a) a person makes a disposal of an asset which he acquired on or after 31st March 1982, and

(b) the disposa1 by which he acquired the asset and any previous disposal of the asset on or after 31st March 1982 was a no gain/no loss disposal,

he shall be treated for the purposes of paragraphs 2(1)(c) and 4(1)(b) above as having acquired the asset before 31st March 1982.

6 (1) Sub-paragraph (2) below applies where—

(a) a person makes a disposal of an asset which he acquired on or after 31st March 1982,

(b) the disposal by which he acquired the asset was a no gain/no loss disposal, and

(c) a deduction falling to be made as mentioned in paragraph (b) of sub-paragraph (1) of paragraph 2 above which was attributable as mentioned in paragraph (c) of that sub-paragraph was made—

(i) on that disposal, or

(ii) where one or more earlier no gain/no loss disposals of the asset have been made on or after 31st March 1982 and since the last disposal of the asset which was not a no gain/no loss disposal, on any such earlier disposal.

(2) Where this sub-paragraph applies the deduction shall be treated for the purposes of paragraph 2 above as falling to be made on the disposal mentioned in sub-paragraph (1)(a) above and not on the no gain/no loss disposal.

7 For the purposes of this Schedule a no gain/no loss disposal is one on which by virtue of any of the enactments specified in section 35(3)(d) neither a gain nor a loss accrues to the person making the disposal.

Assets derived from other assets

8 The references in paragraphs 2(1)(c) and 4(1)(b) above to the disposal of an asset acquired by a person before 31st March 1982 include references to the disposal of an asset which was not acquired by the person before that date if its value is derived from another asset which was so acquired and of which account is to be taken in relation to the disposal under section 43.

Claims

9 (1) No relief shall be given under this Schedule unless a claim is made—

(a) in the case of a gain treated as accruing by virtue of section 178(3) or 179(3) to a company which ceases to be a member of a group, within the period of 2 years beginning at the end of the accounting period in which the company ceases to be a member of the group,

(b) in **[**F455the case of a disposal made by, or a gain treated as accruing to, a person chargeable to corporation tax**]**, within the period of 2 years beginning at the end of the F456... accounting period in which the disposal in question is made, or the gain in question is treated as accruing,

[F457(c) in the case of a disposal made by, or a gain treated as accruing to, a person who is chargeable to capital gains tax, on or before the first anniversary of the 31st January next following the year of assessment in which the disposal in question is made or the gain in question is treated as accruing,**]**

or within such longer period **[**F458or (as the case may be) on or before such later date**]** as the Board may by notice allow.

(2) A claim under sub-paragraph (1) above shall be supported by such particulars as the inspector may require for the purpose of establishing entitlement to relief under this Schedule and the amount of relief due.

Textual Amendments

F455 Words in Sch. 4 para. 9(1)(b) substituted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 43(a)(i)**

F456 Words in Sch. 4 para. 9(1)(b) repealed (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), Sch. 21 para. 43(a)(ii), **Sch. 41 Pt. V(11)**

F457 Sch. 4 para. 9(1)(c) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 43(b)**

F458 Words in Sch. 4 para. 9(1) inserted (with effect in accordance with s. 135(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 21 para. 43(c)**

SCHEDULE 5

Section 86.

ATTRIBUTION OF GAINS TO SETTLORS WITH INTEREST IN NON-RESIDENT OR DUAL RESIDENT SETTLEMENT

Construction of section 86(1)(e)

1 (1) In construing section 86(1)(e) as regards a particular year of assessment, the effect of sections 3 and 77 to 79 shall be ignored.

(2) In construing section 86(1)(e) as regards a particular year of assessment—

(a) any deductions provided for by section 2(2) shall be made in respect of disposals of any of the settled property originating from the settlor, and

(b) section 16(3) shall be assumed not to prevent losses accruing to trustees in one year of assessment from being allowed as a deduction from chargeable gains accruing in a later year of assessment (so far as not previously set against gains).

(3) In a case where—

(a) the trustees **[**F459are participators in a company in respect of property which originates**]** from the settlor, and

(b) under section 13 gains or losses would be treated as accruing to the trustees in a particular year of assessment by virtue of **[**F460so much of their interest as participators as arises from that property**]** if the assumption as to residence specified in section 86(3) were made,

the gains or losses shall be taken into account in construing section 86(1)(e) as regards that year as if they had accrued by virtue of disposals of settled property originating from the settlor.

[F461Subsections (12) and (13) of section 13 shall apply for the purposes of this sub-paragraph as they apply for the purposes of that section.**]**

(4) Where, as regards a particular year of assessment, there would be an amount under section 86(1)(e) (apart from this sub-paragraph) and the trustees fall within section 86(2)(b), the following rules shall apply—

(a) assume that the references in section 86(1)(e) and sub-paragraphs (2)(a) and (3) above to settled property originating from the settlor were to such of it as constitutes protected assets;

(b) assume that the reference in sub-paragraph (3)(a) above to shares originating from the settlor were to such of them as constitute protected assets;

(c) find the amount (if any) which would be arrived at under section 86(1)(e) on those assumptions;

(d) if no amount is so found there shall be deemed to be no amount for the purposes of section 86(1)(e);

(e) if an amount is found under paragraph (c) above it must be compared with the amount arrived at under section 86(1)(e) apart from this sub-paragraph. and the smaller of the 2 shall be taken to be the amount arrived at under section 86(1)(e).

(5) Sub-paragraphs (2) to (4) above shall have effect subject to sub-paragraphs (6) and (7) below.

(6) The following rules shall apply in construing section 86(1)(e) as regards a particular year of assessment ("the year concerned") in a case where the trustees fall within section 86(2)(a)—

(a) if the conditions mentioned in section 86(1) are not fulfilled as regards the settlement in any year of assessment falling before the year concerned, no deductions shall be made in respect of losses accruing before the year concerned;

(b) if the conditions mentioned in section 86(1) are fulfilled as regards the settlement in any year or years of assessment falling before the year

concerned, no deductions shall be made in respect of losses accruing before that year (or the first of those years) so falling,

but nothing in the preceding provisions of this sub-paragraph shall prevent deductions being made in respect of losses accruing in a year of assessment in which the conditions mentioned in section 86(1)(a) to (d) and (f) are fulfilled as regards the settlement.

(7) In construing section 86(1)(e) as regards a particular year of assessment and in relation to a settlement created before 19th March 1991, no account shall be taken of disposals made before 19th March 1991 (whether for the purpose of arriving at gains or for the purpose of arriving at losses).

(8) For the purposes of sub-paragraph (4) above assets are protected assets if—

(a) they are of a description specified in the arrangements mentioned in section 86(2)(b), and

(b) were the trustees to dispose of them at any relevant time, the trustees would fall to be regarded for the purposes of the arrangements as not liable in the United Kingdom to tax on gains accruing to them on the disposal.

(9) For the purposes of sub-paragraph (8) above—

(a) the assumption as to residence specified in section 86(3) shall be ignored;

(b) a relevant time is any time, in the year of assessment concerned, when the trustees fall to be regarded for the purposes of the arrangements as resident in a territory outside the United Kingdom;

(c) if different assets are identified by reference to different relevant times, all of them are protected assets.

Textual Amendments

F459 Words in Sch. 5 para. 1(3)(a) substituted (with application in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(10)(a)**

F460 Words in Sch. 5 para. 1(3)(b) substituted (with application in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(10)(b)**

F461 Words in Sch. 5 para. 1(3) added (with application in accordance with s. 174(11) of the amending Act) by Finance Act 1996 (c. 8), **s. 174(10)(c)**

Test whether settlor has interest

2 (1) For the purposes of section 86(1)(d) a settlor has an interest in a settlement if—

(a) any relevant property which is or may at any time be comprised in the settlement is, or will or may become, applicable for the benefit of or payable to a defined person in any circumstances whatever,

(b) any relevant income which arises or may arise under the settlement is, or will or may become, applicable for the benefit of or payable to a defined person in any circumstances whatever, or

(c) any defined person enjoys a benefit directly or indirectly from any relevant property which is comprised in the settlement or any relevant income arising under the settlement;

but this sub-paragraph is subject to sub-paragraphs (4) to (6) **[**[F462]and paragraph 2A**]** below.

(2) For the purposes of sub-paragraph (1) above—

(a) relevant property is property originating from the settlor,

(b) relevant income is income originating from the settlor.

(3) For the purposes of sub-paragraph (1) above each of the following is a defined person—

(a) the settlor,

(b) the settlor's spouse;

(c) any child of the settlor or of the settlor's spouse;

(d) the spouse of any such child;

[F463(da) any grandchild of the settlor or of the settlor's spouse;

(db) the spouse of any such grandchild;**]**

(e) a company controlled by a person or persons falling within paragraphs (a) to **[**F464(db)**]** above;

(f) a company associated with a company falling within paragraph (e) above.

(4) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above at any time when none of the property concerned can become applicable or payable as mentioned in that paragraph except in the event of—

(a) the bankruptcy of some person who is or may become beneficially entitled to the property,

(b) any assignment of or charge on the property being made or given by some such person,

(c) in the case of a marriage settlement, the death of both parties to the marriage and of all or any of the children of the marriage, or

(d) the death under the age of 25 or some lower age of some person who would be beneficially entitled to the property on attaining that age.

(5) A settlor does not have an interest in a settlement by virtue of paragraph (a) of sub-paragraph (1) above at any time when some person is alive and under the age of 25 if during that person's life none of the property concerned can become applicable or payable as mentioned in that paragraph except in the event of that person becoming bankrupt or assigning or charging his interest in the property concerned.

(6) Sub-paragraphs (4) and (5) above apply for the purposes of paragraph (b) of sub-paragraph (1) above as they apply for the purposes of paragraph (a), reading " income " for "property".

[F465(7) In this paragraph—

"child" includes a stepchild; and

"grandchild" means a child of a child.**]**

(8) For the purposes of sub-paragraph (3) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

(9) For the purposes of sub-paragraph (3) above the question whether a company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or

attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

(10) In sub-paragraphs (8) and (9) "participator" has the meaning given by section 417(1) of the Taxes Act.

Textual Amendments

F462 Words in Sch. 5 para. 2(1) inserted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 2(1)**

F463 Sch. 5 para. 2(3)(da)(db) inserted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 131(1)(a)**

F464 Word in Sch. 5 para. 2(3)(e) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 131(1)(b)**

F465 Sch. 5 para. 2(7) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **s. 131(2)**

I[F466]Settlements created before 17th March 1998

Textual Amendments

F466 Sch. 5 para. 2A and cross-heading inserted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 2(2)**

2A (1) In determining for the purposes of section 86(1)(d) whether the settlor has an interest at any time during any year of assessment in a settlement created before 17th March 1998, paragraphs (da) and (db) of paragraph 2(3) above, and the reference to those paragraphs in paragraph 2(3)(e), shall be disregarded unless—

(a) that year is a year in which one of the four conditions set out in the following provisions of this paragraph becomes fulfilled as regards the settlement; or

(b) one of those conditions became fulfilled as regards that settlement in any previous year of assessment ending on or after 5th April 1998.

(2) The first condition is (subject to sub-paragraph (3) below) that on or after 17th March 1998 property or income is provided directly or indirectly for the purposes of the settlement—

(a) otherwise than under a transaction entered into at arm's length, and

(b) otherwise than in pursuance of a liability incurred by any person before that date.

(3) For the purposes of the first condition, where the settlement's expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards meeting those expenses shall be ignored if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement's income for the year.

(4) The second condition is that—

(a) the trustees become on or after 17th March 1998 neither resident nor ordinarily resident in the United Kingdom, or

(b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 17th March 1998 trustees who fall to

be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(5) The third condition is that on or after 17th March 1998 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.

(6) The fourth condition is that—

(a) on or after 17th March 1998 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and

(b) the person concerned is not one who (looking only at the terms of the settlement immediately before 17th March 1998) would be capable of enjoying a benefit from the settlement on or after that date.

(7) Each of the following persons falls within this sub-paragraph—

(a) any grandchild of the settlor or of the settlor's spouse;

(b) the spouse of any such grandchild;

(c) a company controlled by a person or persons falling within paragraph (a) or (b) above;

(d) a company controlled by any such person or persons together with any person or persons (not so falling) each of whom is for the purposes of paragraph 2(1) above a defined person in relation to the settlement;

(e) a company associated with a company falling within paragraph (c) or (d) above.

(8) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

(9) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

(10) In this paragraph—

'child' includes a step-child;

'grandchild' means a child of a child;

'participator' has the meaning given by section 417(1) of the Taxes Act.**]**

Exceptions from section 86

3 Section 86 does not apply if the settlor dies in the year.

4 (1) This paragraph applies where for the purposes of section 86(1)(d) the settlor has no interest in the settlement at any time in the year except for one of the following reasons, namely, that—

(a) property is, or will or may become, applicable for the benefit of or payable to one of the persons falling within paragraph 2(3)(b) to **[**[F467](db)**]** above,

(b) income is, or will or may become, applicable for the benefit of or payable to one of those persons, or

(c) one of those persons enjoys a benefit from property or income.

(2) This paragraph also applies where sub-paragraph (1) above is fulfilled by virtue of 2 or all of paragraphs (a) to (c) being satisfied by reference to the same person.

(3) Where this paragraph applies, section 86 does not apply if the person concerned dies in the year.

(4) In a case where—

(a) this paragraph applies, and

(b) the person concerned falls within paragraph 2(3)(b)**[**F468, (d) or (db)**]** above,

section 86 does not apply if during the year the person concerned ceases to be married to the settlor**[**F469, child or grandchild**]** concerned (as the case may be).

Textual Amendments

F467 Word in Sch. 5 para. 4(1)(a) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 3(1)**

F468 Words in Sch. 5 para. 4(4)(b) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 3(2)(a)**

F469 Words in Sch. 5 para. 4(4) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 3(2)(b)**

5 (1) This paragraph applies where for the purposes of section 86(1)(d) the settlor has no interest in the settlement at any time in the year except for the reason that there are 2 or more persons, each of whom—

(a) falls within paragraph 2(3)(b) to **[**F470(db)**]** above, and

(b) stands to gain for the reason stated in sub-paragraph (2) below.

(2) The reason is that—

(a) property is, or will or may become, applicable for his benefit or payable to him,

(b) income is, or will or may become, applicable for his benefit or payable to him,

(c) he enjoys a benefit from property or income, or

(d) 2 or all of paragraphs (a) to (c) above apply in his case.

(3) Where this paragraph applies, section 86 does not apply if each of the persons concerned dies in the year.

Textual Amendments

F470 Word in Sch. 5 para. 5(1)(a) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 3(1)**

Right of recovery

6 (1) This paragraph applies where any tax becomes chargeable on, and is paid by, a person in respect of gains treated as accruing to him in a year under section 86(4).

(2) The person shall be entitled to recover the amount of the tax from any person who is a trustee of the settlement.

(3) For the purposes of recovering that amount, the person shall also be entitled to require an inspector to give him a certificate specifying—

(a) the amount of the gains concerned, and

(b) the amount of tax paid,

and any such certificate shall be conclusive evidence of the facts stated in it.

Meaning of "settlo"r

7 For the purposes of section 86 and this Schedule, a person is a settlor in relation to a settlement if the settled property consists of or includes property originating from him.

Meaning of "originatin"g

8 (1) References in section 86 and this Schedule to property originating from a person are references to—

(a) property provided by that person;

(b) property representing property falling within paragraph (a) above;

(c) so much of any property representing both property falling within paragraph (a) above and other property as, on a just apportionment, can be taken to represent property so falling.

(2) References in this Schedule to income originating from a person are references to—

(a) income from property originating from that person;

(b) income provided by that person.

(3) Where a person who is a settlor in relation to a settlement makes reciprocal arrangements with another person for the provision of property or income, for the purposes of this paragraph—

(a) property or income provided by the other person in pursuance of the arrangements shall be treated as provided by the settlor, but

(b) property or income provided by the settlor in pursuance of the arrangements shall be treated as provided by the other person (and not by the settlor).

(4) For the purposes of this paragraph—

(a) where property is provided by a qualifying company controlled by one person alone at the time it is provided, that person shall be taken to provide it;

(b) where property is provided by a qualifying company controlled by 2 or more persons (taking each one separately) at the time it is provided, those persons shall be taken to provide the property and each one shall be taken to provide an equal share of it;

(c) where property is provided by a qualifying company controlled by 2 or more persons (taking them together) at the time it is provided, the persons who are participators in the company at the time it is provided shall be taken to provide it and each one shall be taken to provide so much of it as is attributed to him on the basis of a just apportionment;

but where a person would be taken to provide less than one-twentieth of any property by virtue of paragraph (c) above and apart from this provision, he shall not be taken to provide any of it by virtue of that paragraph.

(5) For the purposes of sub-paragraph (4) above a qualifying company is a close company or a company which would be a close company if it were resident in the United Kingdom.

(6) For the purposes of this paragraph references to property representing other property include references to property representing accumulated income from that other property.

(7) For the purposes of this paragraph property or income is provided by a person if it is provided directly or indirectly by the person.

(8) For the purposes of this paragraph the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

(9) In this paragraph "participator" has the meaning given by section 417(1) of the Taxes Act.

F471(10) . . . . . .

Textual Amendments

F471 Sch. 5 para. 8(10) repealed (with effect in accordance with Sch. 41 Pt. 5(30) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(30)**

Modifications etc. (not altering text)

C199 Sch. 5 para. 8 applied (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 23 para. 6(6)**

Qualifying settlements, and commencement

9 (1) A settlement created on or after 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—

(a) the year of assessment in which it is created, and

(b) subsequent years of assessment.

[F472(1A) Subject to sub-paragraph (1B) below, a settlement created before 19th March 1991 is a qualifying settlement for the purposes of section 86 and this Schedule in—

(a) the year 1999-00, and

(b) subsequent years of assessment.

(1B) Where a settlement created before 19th March 1991 is a protected settlement immediately after the beginning of 6th April 1999, that settlement shall be treated as a qualifying settlement for the purposes of section 86 and this Schedule in a year of assessment mentioned in sub-paragraph (1A)(a) or (b) above only if—

(a) any of the five conditions set out in subsections (3) to (6A) below becomes fulfilled as regards the settlement in that year; or

(b) any of those five conditions became so fulfilled in any previous year of assessment ending after 19th March 1991.**]**

F473(2) . . . . . .

(3) The first condition is that on or after 19th March 1991 property or income is provided directly or indirectly for the purposes of the settlement—

(a) otherwise than under a transaction entered into at arm's length, and

(b) otherwise than in pursuance of a liability incurred by any person before that date;

but if the settlement's expenses relating to administration and taxation for a year of assessment exceed its income for the year, property or income provided towards meeting those expenses shall be ignored for the purposes of this condition if the value of the property or income so provided does not exceed the difference between the amount of those expenses and the amount of the settlement's income for the year.

(4) The second condition is that—

(a) the trustees become on or after 19th March 1991 neither resident nor ordinarily resident in the United Kingdom, or

(b) the trustees, while continuing to be resident and ordinarily resident in the United Kingdom, become on or after 19th March 1991 trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(5) The third condition is that on or after 19th March 1991 the terms of the settlement are varied so that any person falling within sub-paragraph (7) below becomes for the first time a person who will or might benefit from the settlement.

(6) The fourth condition is that—

(a) on or after 19th March 1991 a person falling within sub-paragraph (7) below enjoys a benefit from the settlement for the first time, and

(b) the person concerned is not one who (looking only at the terms of the settlement immediately before 19th March 1991) would be capable of enjoying a benefit from the settlement on or after that date.

[F474(6A) The fifth condition is that the settlement ceases to be a protected settlement at any time on or after 6th April 1999.**]**

(7) Each of the following persons falls within this sub-paragraph—

(a) a settlor;

(b) the spouse of a settlor;

(c) any child of a settlor or of a settlor's spouse;

(d) the spouse of any such child;

[F475(da) any grandchild of a settlor or of a settlor's spouse;

(db) the spouse of any such grandchild;**]**

(e) a company controlled by a person or persons falling within paragraphs (a) to **[**F476(db)**]** above;

(f) a company associated with a company falling within paragraph (e) above.

F477(8) . . . . . .

(9) For the purposes of sub-paragraph (7) above the question whether a company is controlled by a person or persons shall be construed in accordance with section 416 of the Taxes Act; but in deciding that question for those purposes no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

(10) For the purposes of sub-paragraph (7) above the question whether one company is associated with another shall be construed in accordance with section 416 of the Taxes Act; but where in deciding that question for those purposes it falls to be decided whether a company is controlled by a person or persons, no rights or powers of (or attributed to) an associate or associates of a person shall be attributed to him under section 416(6) if he is not a participator in the company.

[[F478](10A) Subject to sub-paragraph (10B) below, a settlement is a protected settlement at any time in a year of assessment if at that time the beneficiaries of that settlement are confined to persons falling within some or all of the following descriptions, that is to say—

(a) children of a settlor or of a spouse of a settlor who are under the age of eighteen at that time or who were under that age at the end of the immediately preceding year of assessment;

(b) unborn children of a settlor, of a spouse of a settlor, or of a future spouse of a settlor;

(c) future spouses of any children or future children of a settlor, a spouse of a settlor or any future spouse of a settlor;

(d) a future spouse of a settlor;

(e) persons outside the defined categories.

(10B) For the purposes of sub-paragraph (10A) above a person is outside the defined categories at any time if, and only if, there is no settlor by reference to whom he is at that time a defined person in relation to the settlement for the purposes of paragraph 2(1) above.

(10C) For the purposes of sub-paragraph (10A) above a person is a beneficiary of a settlement if—

(a) there are any circumstances whatever in which relevant property which is or may become comprised in the settlement is or will or may become applicable for his benefit or payable to him;

(b) there are any circumstances whatever in which relevant income which arises or may arise under the settlement is or will or may become applicable for his benefit or payable to him;

(c) he enjoys a benefit directly or indirectly from any relevant property comprised in the settlement or any relevant income arising under the settlement.

(10D) In sub-paragraph (10C) above—

"relevant property" means property originating from a settlor; and

"relevant income" means income originating from a settlor.**]**

[[F479](11) In this paragraph—

"child" includes a step-child;

"grandchild" means a child of a child;

"participator" has the meaning given by section 417(1) of the Taxes Act.**]**

Textual Amendments

F472 Sch. 5 para. 9(1A)(1B) inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 132(1)**

F473 Sch. 5 para. 9(2) repealed (for the purpose of determining whether any settlement is a qualifying settlement in the year 1999-00 or any subsequent year of assessment) by Finance Act 1998 (c. 36), s. 132(2), **Sch. 27 Pt. III(30)**

F474 Sch. 5 para. 9(6A) inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 132(3)**

F475 Sch. 5 para. 9(7)(da)(db) inserted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 4(1)(a)** (with Sch. 22 para. 4(3))

F476 Word in Sch. 5 para. 9(7)(e) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 4(1)(b)** (with Sch. 22 para. 4(3))

F477 Sch. 5 para. 9(8) repealed (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(30)**

F478 Sch. 5 para. 9(10A)-(10D) inserted (31.7.1998) by Finance Act 1998 (c. 36), **s. 132(4)**

F479 Sch. 5 para. 9(11) substituted (with effect in accordance with s. 131(4) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 4(2)**

Modifications etc. (not altering text)

C200 Sch. 5 para. 9(10A)(a) applied (with modifications) (31.7.1998) by Finance Act 1998 (c. 36), **Sch. 23 para. 6(3)**

Information

10 An inspector may by notice require any person who is or has been a trustee of, a beneficiary under, or a settlor in relation to, a settlement to give him within such time as he may direct (which must not be less than 28 days beginning with the day the notice is given) such particulars as he thinks necessary for the purposes of section 86 and this Schedule and specifies in the notice.

F480 11 . . . . . .

Textual Amendments

F480 Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by Finance Act 1994 (c. 9), s. 97(4), **Sch. 26 Pt. V(10)**

F480 12 . . . . . .

Textual Amendments

F480 Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by Finance Act 1994 (c. 9), s. 97(4), **Sch. 26 Pt. V(10)**

F480 13 . . . . . .

Textual Amendments

F480 Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by Finance Act 1994 (c. 9), s. 97(4), **Sch. 26 Pt. V(10)**

F480 14 . . . . . .

Textual Amendments

F480 Sch. 5 paras. 11-14 repealed (with effect in accordance with s. 97(5) of the amending Act) by Finance Act 1994 (c. 9), s. 97(4), **Sch. 26 Pt. V(10)**

[F481 SCHEDULE 5A

Section 98A.

SETTLEMENTS WITH FOREIGN ELEMENT: INFORMATION

Textual Amendments

F481 Sch. 5A inserted (3.5.1994) by Finance Act 1994 (c. 9), **s. 97(3)**

1 In this Schedule "the commencement day" means the day on which the Finance Act 1994 was passed.

2 (1) This paragraph applies if—

(a) a settlement was created before **[**F482 17th March 1998**]**,

(b) on or after the commencement day a person transfers property to the trustees otherwise than under a transaction entered into at arm's length and otherwise than in pursuance of a liability incurred by any person before that day,

(c) the trustees are not resident or ordinarily resident in the United Kingdom at the time the property is transferred, and

(d) the transferor knows, or has reason to believe, that the trustees are not so resident or ordinarily resident.

(2) Before the expiry of the period of twelve months beginning with the relevant day, the transferor shall deliver to the Board a return which—

(a) identifies the settlement, and

(b) specifies the property transferred, the day on which the transfer was made, and the consideration (if any) for the transfer.

(3) For the purposes of sub-paragraph (2) above the relevant day is the day on which the transfer is made.

Textual Amendments

F482 Words in Sch. 5A para. 2(1)(a) substituted (with effect in accordance with s. 131(4) of, Sch. 22 para. 5(2) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 22 para. 5(1)**

3 (1) This paragraph applies if a settlement is created on or after the commencement day, and at the time it is created—

(a) the trustees are not resident or ordinarily resident in the United Kingdom, or

(b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Any person who—

(a) is a settlor in relation to the settlement at the time it is created, and

(b) at that time fulfils the condition mentioned in sub-paragraph (3) below,

shall, before the expiry of the period of three months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.

(3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.

(4) The particulars are—

(a) the day on which the settlement was created;

(b) the name and address of the person delivering the return;

(c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the settlement is created.

4 (1) This paragraph applies if a settlement is created on or after 19th March 1991, and at the time it is created—

(a) the trustees are not resident or ordinarily resident in the United Kingdom, or

(b) the trustees are resident or ordinarily resident in the United Kingdom but fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Any person who—

(a) is a settlor in relation to the settlement at the time it is created,

(b) at that time does not fulfil the condition mentioned in sub-paragraph (3) below, and

(c) first fulfils that condition at a time falling on or after the commencement day,

shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying the particulars mentioned in sub-paragraph (4) below.

(3) The condition is that the person concerned is domiciled in the United Kingdom and is either resident or ordinarily resident in the United Kingdom.

(4) The particulars are—

(a) the day on which the settlement was created;

(b) the name and address of the person delivering the return;

(c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(5) For the purposes of sub-paragraph (2) above the relevant day is the day on which the person first fulfils the condition as mentioned in paragraph (c) of that sub-paragraph.

5 (1) This paragraph applies if—

(a) the trustees of a settlement become at any time (the relevant time) on or after the commencement day neither resident nor ordinarily resident in the United Kingdom, or

(b) the trustees of a settlement, while continuing to be resident and ordinarily resident in the United Kingdom, become at any time (the relevant time) on or after the commencement day trustees who fall to be regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom.

(2) Any person who was a trustee of the settlement immediately before the relevant time shall, before the expiry of the period of twelve months beginning with the relevant day, deliver to the Board a return specifying—

(a) the day on which the settlement was created,

(b) the name and address of each person who is a settlor in relation to the settlement immediately before the delivery of the return, and

(c) the names and addresses of the persons who are the trustees immediately before the delivery of the return.

(3) For the purposes of sub-paragraph (2) above the relevant day is the day when the relevant time falls.

6 (1) Nothing in paragraph 2, 3, 4 or 5 above shall require information to be contained in the return concerned to the extent that—

(a) before the expiry of the period concerned the information has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or

(b) after the expiry of the period concerned the information falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.

(2) Nothing in paragraph 2, 3, 4 or 5 above shall require a return to be delivered if—

(a) before the expiry of the period concerned all the information concerned has been provided to the Board by any person in pursuance of the paragraph concerned or of any other provision, or

(b) after the expiry of the period concerned all the information concerned falls to be provided to the Board by any person in pursuance of any provision other than the paragraph concerned.**]**

[[F483]SCHEDULE 5B

ENTERPRISE INVESTMENT SCHEME: RE-INVESTMENT

Textual Amendments

F483 Sch. 5B inserted (with effect in accordance with Sch. 13 para. 4(4) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 13 para. 4(3)**

Application of Schedule

1 (1) This Schedule applies where—

(a) there would (apart from paragraph 2(2)(a) below) be a chargeable gain ("the original gain") accruing to an individual ("the investor") at any time ("the accrual time") on or after 29th November 1994;

(b) the gain is one accruing either on the disposal by the investor of any asset or in accordance with **[**F484section 164F or 164FA,**]** paragraphs 4 and 5 below or paragraphs 4 and 5 of Schedule 5C;

(c) the investor makes a qualifying investment; and

(d) the investor is resident or ordinarily resident in the United Kingdom at the accrual time and the time when he makes the qualifying investment and is not, in relation to the qualifying investment, a person to whom sub-paragraph (4) below applies.

[F485(2) The investor makes a qualifying investment for the purposes of this Schedule if—

(a) eligible shares in a company for which he has subscribed wholly in cash are issued to him at a qualifying time and, where that time is before the accrual time, the shares are still held by the investor at the accrual time,

(b) the company is a qualifying company in relation to the shares,

(c) at the time when they are issued the shares are fully paid up (disregarding for this purpose any undertaking to pay cash to the company at a future date),

(d) the shares are subscribed for, and issued, for bona fide commercial purposes and not as part of arrangements the main purpose or one of the main purposes of which is the avoidance of tax,

(e) the requirements of section 289(1A) of the Taxes Act are satisfied in relation to the company,

(f) all the shares comprised in the issue are issued in order to raise money for the purpose of a qualifying business activity, and

(g) the money raised by the issue is employed not later than the time mentioned in section 289(3) of the Taxes Act wholly for the purpose of that activity,

and for the purposes of this Schedule, the condition in paragraph (g) above does not fail to be satisfied by reason only of the fact that an amount of money which is not significant is employed for another purpose.

(3) In sub-paragraph (2) above "a qualifying time", in relation to any shares subscribed for by the investor, means—

(a) any time in the period beginning one year before and ending three years after the accrual time, or

(b) any such time before the beginning of that period or after it ends as the Board may by notice allow.**]**

(4) This sub-paragraph applies to the investor in relation to a qualifying investment if—

(a) though resident or ordinarily resident in the United Kingdom at the time when he makes the investment, he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom, and

(b) were section 150A to be disregarded, the arrangements would have the effect that he would not be liable in the United Kingdom to tax on a gain arising on a disposal, immediately after their acquisition, of the shares acquired in making that investment.

Textual Amendments

F484 Words in Sch. 5B para. 1(1)(b) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 27(1)**

F485 Sch. 5B para. 1(2)(3) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 27(2)**

I[F486]Failure of conditions of application

Textual Amendments

F486 Sch. 5B para. 1A and cross-heading inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 28**

1A (1) If the condition in sub-paragraph (2)(b) of paragraph 1 above is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.

(2) If the condition in sub-paragraph (2)(e) of that paragraph is not satisfied in consequence of an event occurring after the issue of eligible shares, the shares shall be treated for the purposes of this Schedule as ceasing to be eligible shares on the date of the event.

(3) If the condition in sub-paragraph (2)(f) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule as never having been eligible shares.

(4) If the condition in sub-paragraph (2)(g) of that paragraph is not satisfied in relation to an issue of eligible shares, the shares shall be treated for the purposes of this Schedule—

(a) if the claim under this Schedule is made after the time mentioned in section 289(3) of the Taxes Act, as never having been eligible shares; and

(b) if that claim is made before that time, as ceasing to be eligible shares at that time.

(5) None of the preceding sub-paragraphs applies unless—

(a) the company has given notice under paragraph 16(2) or (4) below or section 310(2) of the Taxes Act; or

(b) an inspector has given notice to the company stating that, by reason of the matter mentioned in that sub-paragraph, the shares should, in his opinion, be treated for the purposes of this Schedule as never having been or, as the case may be, as ceasing to be eligible shares.

(6) The giving of notice by an inspector under sub-paragraph (5) above shall be taken, for the purposes of the provisions of the Management Act relating to appeals against decisions on claims, to be a decision refusing a claim made by the company.

(7) Where any issue has been determined on an appeal brought by virtue of section 307(1B) of the Taxes Act (appeal against notice that relief was not due), the determination shall be conclusive for the purposes of any appeal brought by virtue of sub-paragraph (6) above on which that issue arises.**]**

Postponement of original gain

2 (1) On the making of a claim by the investor for the purposes of this Schedule, so much of the investor's unused qualifying expenditure on **[**F487the relevant shares**]** as—

(a) is specified in the claim, and

(b) does not exceed so much of the original gain as is unmatched,

shall be set against a corresponding amount of the original gain.

(2) Where an amount of qualifying expenditure on **[**F488the relevant shares**]** is set under this Schedule against the whole or part of the original gain—

(a) so much of that gain as is equal to that amount shall be treated as not having accrued at the accrual time; but

(b) paragraphs 4 and 5 below shall apply for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of **[**F489the relevant shares**]**.

(3) For the purposes of this Schedule—

[F490(a) the investor's qualifying expenditure on **[**F488the relevant shares**]** is the amount subscribed by him for the shares; and**]**

(b) that expenditure is unused to the extent that it has not already been set under this Schedule against the whole or any part of a chargeable gain.

(4) For the purposes of this paragraph the original gain is unmatched, in relation to any qualifying expenditure on **[**F491the relevant shares**]**, to the extent that it has not had any other expenditure set against it under this Schedule or Schedule 5C.

Textual Amendments

F487 Words in Sch. 5B para. 2(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(a)**

F488 Words in Sch. 5B para. 2(2)(3) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(b)**

F489 Words in Sch. 5B para. 2(2)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(c)**

F490 Sch. 5B para. 2(3)(a) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 29**

F491 Words in Sch. 5B para. 2(4) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(a)**

Chargeable events

3 (1) Subject to the following provisions of this paragraph, there is for the purposes of this Schedule a chargeable event in relation to **[**F492any of the relevant shares**]** if, after the making of the qualifying investment—

(a) the investor disposes of those shares otherwise than by way of a disposal within marriage;

(b) those shares are disposed of, otherwise than by way of a disposal to the investor, by a person who acquired them on a disposal made by the investor within marriage;

(c) the investor becomes a non-resident while holding those shares and within **[**F493the five year period**]**;

(d) a person who acquired those shares on a disposal within marriage becomes a non-resident while holding those shares and within **[**F493the five year period**]**; **[**F494or

(e) those shares cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.**]**

F495(2) . . . . . .

(3) For the purposes of this Schedule there shall not be a chargeable event by virtue of sub-paragraph (1)(c) or (d) above in relation to any shares if—

(a) the reason why the person in question becomes a non-resident is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and

(b) he again becomes resident or ordinarily resident in the United Kingdom within the period of three years from the time when he became a non-resident, without having meanwhile disposed of any of those shares;

and accordingly no assessment shall be made by virtue of sub-paragraph (1)(c) or (d) above before the end of that period in a case where the condition in paragraph (a) above is satisfied and the condition in paragraph (b) above may be satisfied.

(4) For the purposes of sub-paragraph (3) above a person shall be taken to have disposed of any shares if and only if there has been such a disposal as would have been a chargeable event in relation to those shares if the person making the disposal had been resident in the United Kingdom.

(5) Where in any case—

(a) the investor or a person who has acquired **[**F496any of the relevant shares**]** on a disposal within marriage dies, and

(b) an event occurs at or after the time of the death which (apart from this sub-paragraph) would be a chargeable event in relation to **[**F496any of the relevant shares**]** held by the deceased immediately before his death,

that event shall not be a chargeable event in relation to the shares so held.

F497**[**(6) Any reference in the following provisions of this Schedule to a chargeable event falling within a particular paragraph of sub-paragraph (1) above is a reference to a chargeable event arising for the purposes of this Schedule by virtue of that paragraph.**]**

Textual Amendments

F492 Words in Sch. 5B para. 3(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(d)**

F493 Words in Sch. 5B para. 3(1)(c)(d) substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 30(1)(a)**

F494 Sch. 5B para. 3(1)(e) and preceding word substituted for Sch. 5B para. 3(1)(e)(f) (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 30(1)(b)**

F495 Sch. 5B para. 3(2) repealed (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), Sch. 13 para. 30(2), **Sch. 27 Pt. III(14)**

F496 Words in Sch. 5B para. 3(5)(a)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(d)**

F497 Sch. 5B para. 3(6) inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 30(3)**

Gain accruing on chargeable event

4 (1) On the occurrence of a chargeable event in relation to **[**F498any of the relevant shares**]** in relation to which there has not been a previous chargeable event—

(a) a chargeable gain shall be treated as accruing at the time of the event; and

[F499(b) the amount of the gain shall be equal to so much of the deferred gain as is attributable to the shares in relation to which the chargeable event occurs.**]**

[F500(2) Any question for the purposes of capital gains tax as to whether any shares to which a disposal (including a disposal within marriage) relates are shares to which deferral relief is attributable shall be determined in accordance with sub-paragraphs (3) and (4) below.

(3) Where shares of any class in a company have been acquired by an individual on different days, any disposal by him of shares of that class shall be treated as relating to those acquired on an earlier day rather than to those acquired on a later day.

(4) Where shares of any class in a company have been acquired by an individual on the same day, any of those shares disposed of by him shall be treated as disposed of in the following order, namely—

(a) first any to which neither deferral relief nor relief under Chapter III of Part VII of the Taxes Act is attributable;

(b) next any to which deferral relief, but not relief under that Chapter, is attributable;

(c) next any to which relief under that Chapter, but not deferral relief, is attributable; and

(d) finally any to which both deferral relief and relief under that Chapter are attributable.

(4A) The following, namely—

(a) any shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable and which were disposed of to an individual by a disposal within marriage, and

(b) any shares to which relief under that Chapter is attributable and which were transferred to an individual as mentioned in section 304 of that Act,

shall be treated for the purposes of sub-paragraphs (3) and (4) above as acquired by him on the day on which they were issued.

(4B) Chapter I of Part IV of this Act has effect subject to sub-paragraphs (2) to (4A) above.

(4C) Sections 104, 105 and 106A shall not apply to shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.**]**

(5) Where at the time of a chargeable event **[**F501any of the relevant shares**]** are treated for the purposes of this Act as represented by assets which consist of or include assets other than those shares—

[F502(a) so much of the deferred gain as is attributable to those shares shall be treated, in determining for the purposes of this paragraph the amount of the deferred gain to be treated as attributable to each of those assets, as apportioned in such manner as may be just and reasonable between those assets; and**]**

(b) as between different assets treated as representing **[**F503the same shares**]**, **[**F504sub-paragraphs (3) to (4A) above**]** shall apply with the necessary modifications in relation to those assets as they would apply in relation to the shares.

[F505(6) In order to determine, for the purposes of this paragraph, the amount of the deferred gain attributable to any shares, a proportionate part of the amount of the gain shall be attributed to each of the relevant shares held, immediately before the occurrence of the chargeable event in question, by the investor or a person who has acquired any of the relevant shares from the investor on a disposal within marriage.

(7) In this paragraph "the deferred gain" means—

(a) the amount of the original gain against which expenditure has been set under this Schedule, less

(b) the amount of any gain treated as accruing under this paragraph previously as a result of a disposal of any of the relevant shares.**]**

Textual Amendments

F498 Words in Sch. 5B para. 4(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(e)**

F499 Sch. 5B para. 4(1)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 2(1)**

F500 Sch. 5B para. 4(2)-(4C) substituted for Sch. 5B para. 4(2)-(4) (with effect in accordance with Sch. 13 para. 31(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 31(1)**

F501 Words in Sch. 5B para. 4(5) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(e)**

F502 Sch. 5B para. 4(5)(a) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 2(2)**

F503 Words in Sch. 5B para. 4(5)(b) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(f)**

F504 Words in Sch. 5B para. 4(5)(b) substituted (with effect in accordance with Sch. 13 para. 31(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 31(2)**

F505 Sch. 5B para. 4(6)(7) inserted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 2(3)**

Person to whom gain accrues

5 (1) The chargeable gain which accrues, in accordance with paragraph 4 above, on the occurrence in relation to **[**F506any of the relevant shares**]** of a chargeable event shall be treated as accruing, as the case may be—

(a) to the person who makes the disposal,

(b) to the person who becomes a non-resident, **[**F507or

(c) to the person who holds the shares in question when they cease (or are treated for the purposes of this Schedule as ceasing) to be eligible shares.**]**

(2) Where—

(a) sub-paragraph (1) above provides for the holding of shares at a particular time to be what identifies the person to whom any chargeable gain accrues, and

(b) at that time, some of those shares are held by the investor and others are held by a person to whom the investor has transferred them by a disposal within marriage,

the amount of the chargeable gain accruing by virtue of paragraph 4 above shall be computed separately in relation to the investor and that person without reference to the shares held by the other.

Textual Amendments

F506 Words in Sch. 5B para. 5(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(g)**

F507 Sch. 5B para. 5(1)(c) and preceding word substituted for Sch. 5B para. 5(1)(c)(d) (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 32**

[F508 Claims

Textual Amendments

F508 Sch. 5B para. 6 and cross-heading substituted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 33**

6 (1) Subject to sub-paragraph (2) below, section 306 of the Taxes Act shall apply in relation to a claim under this Schedule in respect of **[**F509the relevant shares**]** as it applies in relation to a claim for relief under Chapter III of Part VII of that Act in respect of eligible shares.

(2) That section, as it so applies, shall have effect as if—

(a) any reference to the conditions for the relief were a reference to the conditions for the application of this Schedule;

(b) in subsection (1), the words "(or treated by section 289B(5) as so issued)" were omitted; and

(c) subsections (7) to (9) were omitted.**]**

Textual Amendments

F509 Words in Sch. 5B para. 6(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(h)**

[F510 Reorganisations

Textual Amendments

F510 Sch. 5B paras. 7-9 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 34**

7 (1) Where an individual holds shares which form part of the ordinary share capital of a company and include shares of more than one of the following kinds, namely—

(a) shares to which deferral relief and relief under Chapter III of Part VII of the Taxes Act are attributable,

(b) shares to which deferral relief but not relief under that Chapter is attributable, and

(c) shares to which deferral relief is not attributable,

then, if there is within the meaning of section 126 a reorganisation affecting those shares, section 127 shall apply (subject to the following provisions of this paragraph) separately to shares falling within paragraph (a), (b) or (c) above (so that shares of each kind are treated as a separate holding of original shares and identified with a separate new holding).

(2) Where—

(a) an individual holds shares ("the existing holding") which form part of the ordinary share capital of a company,

(b) there is, by virtue of any such allotment for payment as is mentioned in section 126(2)(a), a reorganisation affecting the existing holding, and

(c) immediately following the reorganisation, the existing holding or the allotted shares are shares to which deferral relief is attributable,

sections 127 to 130 shall not apply in relation to the existing holding.

Acquisition of share capital by new company

8 (1) This paragraph applies where—

(a) a company ("the new company") in which the only issued shares are subscriber shares acquires all the shares ("old shares") in another company ("the old company");

(b) the consideration for the old shares consists wholly of the issue of shares ("new shares") in the new company;

(c) the consideration for new shares of each description consists wholly of old shares of the corresponding description;

(d) new shares of each description are issued to the holders of old shares of the corresponding description in respect of and in proportion to their holdings;

(e) at some time before the issue of the new shares—

(i) the old company issued eligible shares; and

(ii) a certificate in relation to those eligible shares was issued by that company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied); and

(f) by virtue of section 127 as applied by section 135(3), the exchange of shares is not treated as involving a disposal of the old shares or an acquisition of the new shares.

(2) For the purposes of this Schedule, deferral relief attributable to any old shares shall be attributable instead to the new shares for which they are exchanged.

(3) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were subscribed for by and issued to the individual, this Schedule shall have effect as if—

(a) the new shares had been subscribed for by him at the time when, and for the amount for which, the old shares were subscribed for by him;

(b) the new shares had been issued to him by the new company at the time when the old shares were issued to him by the old company; and

(c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.

(4) Where, in the case of any new shares held by an individual to which deferral relief becomes so attributable, the old shares for which they are exchanged were acquired by the individual on a disposal within marriage, this Schedule shall have effect as if—

(a) the new shares had been subscribed for at the time when, and for the amount for which, the old shares were subscribed for;

(b) the new shares had been issued by the new company at the time when the old shares were issued by the old company; and

(c) the claim under this Schedule made in respect of the old shares had been made in respect of the new shares.

(5) Where deferral relief becomes so attributable to any new shares—

(a) this Schedule shall have effect as if anything which, under paragraph 1A(5) above, paragraph 16 below or section 306(2) of the Taxes Act as applied by paragraph 6 above has been done, or is required to be done, by or in relation to the old company had been done, or were required to be done, by or in relation to the new company; and

(b) any appeal brought by the old company against a notice under paragraph 1A(5)(b) may be prosecuted by the new company as if it had been brought by that company.

(6) For the purposes of this paragraph old shares and new shares are of a corresponding description if, on the assumption that they were shares in the same company, they would be of the same class and carry the same rights; and in sub-paragraph (1) above references to shares, except in the expressions "eligible shares" and "subscriber shares", include references to securities.

(7) Nothing in section 293(8) of the Taxes Act, as applied by the definition of "qualifying company" in paragraph 19(1) below, shall apply in relation to such an exchange of shares, or shares and securities, as is mentioned in sub-paragraph (1) above or arrangements with a view to such an exchange.

Other reconstructions and amalgamations

9 (1) Subject to sub-paragraphs (2) and (3) below, sections 135 and 136 shall not apply in respect of shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable.

(2) Sub-paragraph (1) above shall not have effect to disapply section 135 or 136 where—

(a) the new holding consists of new ordinary shares ("the new shares") carrying no present or future preferential right to dividends or to a company's assets on its winding up and no present or future right to be redeemed,

(b) the new shares are issued after the end of the relevant period, and

(c) the condition in sub-paragraph (4) below is satisfied.

(3) Sub-paragraph (1) above shall not have effect to disapply section 135 where shares to which deferral relief, but not relief under Chapter III of Part VII of the Taxes Act, is attributable are exchanged for other shares in such circumstances as are mentioned in paragraph 8(1) above.

(4) The condition is that at some time before the issue of the new shares—

(a) the company issuing them issued eligible shares, and

(b) a certificate in relation to those eligible shares was issued by the company for the purposes of subsection (2) of section 306 of the Taxes Act (as applied by paragraph 6 above) and in accordance with that section (as so applied).

(5) In sub-paragraph (2) above "new holding" shall be construed in accordance with sections 126, 127, 135 and 136.**]**

[F511 Re-investment in same company etc.

Textual Amendments

F511 Sch. 5B paras. 10-15 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 35**

10 (1) An individual to whom any eligible shares in a qualifying company are issued shall not be regarded for the purposes of this Schedule as making a qualifying investment if, where the asset disposed of consisted of shares in or other securities of any company ("the initial holding"), the qualifying company—

(a) is the company in which the initial holding subsisted; or

(b) is a company that was, at the time of the disposal of the initial holding, or is, at the time of the issue of the eligible shares, a member of the same group of companies as the company in which the initial holding subsisted.

(2) Where—

(a) any eligible shares in a qualifying company ("the acquired holding") are issued to an individual,

(b) an amount of qualifying expenditure on those shares has been set under this Schedule against the whole or part of any chargeable gain (the "postponed gain"), and

(c) after the issue of those shares, eligible shares in a relevant company are issued to him,

he shall not be regarded in relation to the issue to him of the shares in the relevant company as making a qualifying investment for the purposes of this Schedule.

(3) For the purposes of sub-paragraph (2) above a company is a relevant company if—

(a) where that individual has disposed of any of the acquired holding, it is the company in which the acquired holding has subsisted or a company which was a member of the same group of companies as that company at any time since the acquisition of the acquired holding;

(b) it is a company in relation to the disposal of any shares in which there has been a claim under this Schedule such that, without that claim, there would have been no postponed gain in relation to the acquired holding; or

(c) it is a company which, at the time of the disposal or acquisition to which the claim relates, was a member of the same group of companies as a company falling within paragraph (b) above.

Pre-arranged exits

11 (1) Where an individual subscribes for eligible shares ("the shares") in a company, the shares shall be treated as not being eligible shares for the purposes of this Schedule if the relevant arrangements include—

(a) arrangements with a view to the subsequent repurchase, exchange or other disposal of the shares or of other shares in or securities of the same company;

(b) arrangements for or with a view to the cessation of any trade which is being or is to be or may be carried on by the company or a person connected with the company;

(c) arrangements for the disposal of, or of a substantial amount of, the assets of the company or of a person connected with the company;

(d) arrangements the main purpose of which, or one of the main purposes of which, is (by means of any insurance, indemnity or guarantee or otherwise) to provide partial or complete protection for persons investing in shares in that company against what would otherwise be the risks attached to making the investment.

(2) The arrangements referred to in sub-paragraph (1)(a) above do not include any arrangements with a view to such an exchange of shares, or shares and securities, as is mentioned in paragraph 8(1) above.

(3) The arrangements referred to in sub-paragraph (1)(b) and (c) above do not include any arrangements applicable only on the winding up of a company except in a case where—

(a) the relevant arrangements include arrangements for the company to be wound up; or

(b) the company is wound up otherwise than for bona fide commercial reasons.

(4) The arrangements referred to in sub-paragraph (1)(d) above do not include any arrangements which are confined to the provision—

(a) for the company itself, or

(b) in the case of a company which is a parent company of a trading group, for the company itself, for the company itself and one or more of its subsidiaries or for one or more of its subsidiaries,

of any such protection against the risks arising in the course of carrying on its business as it might reasonably be expected so to provide in normal commercial circumstances.

(5) The reference in sub-paragraph (4) above to the parent company of a trading group shall be construed in accordance with the provision contained for the purposes of section 293 of the Taxes Act in that section.

(6) In this paragraph "the relevant arrangements" means—

(a) the arrangements under which the shares are issued to the individual; and

(b) any arrangements made before the issue of the shares to him in relation to or in connection with that issue.

Put options and call options

12 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares ("the shares") in a company and—

(a) an option, the exercise of which would bind the grantor to purchase such shares, is granted to the individual during the relevant period; or

(b) an option, the exercise of which would bind the individual to sell such shares, is granted by the individual during the relevant period.

(2) The shares to which the option relates shall be treated for the purposes of this Schedule—

(a) if the option is granted on or before the date of the issue of the shares, as never having been eligible shares; and

(b) if the option is granted after that date, as ceasing to be eligible shares on the date when the option is granted.

(3) The shares to which the option relates shall be taken to be those which, if—

(a) the option were exercised immediately after the grant, and

(b) any shares in the company acquired by the individual after the grant were disposed of immediately after being acquired,

would be treated for the purposes of this Schedule as disposed of in pursuance of the option.

(4) Nothing in this paragraph shall prejudice the operation of paragraph 11 above.

(5) An individual who acquires any eligible shares on a disposal within marriage shall be treated for the purposes of this paragraph and paragraphs 13 to 15 below as if he subscribed for those shares.

Value received by investor

13 (1) Where an individual who subscribes for eligible shares (“the shares") in a company receives any value from the company at any time in the seven year period, the shares shall be treated as follows for the purposes of this Schedule—

(a) if the individual receives the value on or before the date of the issue of the shares, as never having been eligible shares; and

(b) if the individual receives the value after that date, as ceasing to be eligible shares on the date when the value is received.

(2) For the purposes of this paragraph an individual receives value from the company if the company—

(a) repays, redeems or repurchases any of its share capital or securities which belong to the individual or makes any payment to him for giving up his right to any of the company’s share capital or any security on its cancellation or extinguishment;

(b) repays, in pursuance of any arrangements for or in connection with the acquisition of the shares, any debt owed to the individual other than a debt which was incurred by the company—

(i) on or after the date on which he subscribed for the shares; and

(ii) otherwise than in consideration of the extinguishment of a debt incurred before that date;

(c) makes to the individual any payment for giving up his right to any debt on its extinguishment;

(d) releases or waives any liability of the individual to the company or discharges, or undertakes to discharge, any liability of his to a third person;

(e) makes a loan or advance to the individual which has not been repaid in full before the issue of the shares;

(f) provides a benefit or facility for the individual;

(g) disposes of an asset to the individual for no consideration or for a consideration which is or the value of which is less than the market value of the asset;

(h) acquires an asset from the individual for a consideration which is or the value of which is more than the market value of the asset; or

(i) makes any payment to the individual other than a qualifying payment.

(3) For the purposes of sub-paragraph (2)(e) above there shall be treated as if it were a loan made by the company to the individual—

(a) the amount of any debt (other than an ordinary trade debt) incurred by the individual to the company; and

(b) the amount of any debt due from the individual to a third person which has been assigned to the company.

(4) For the purposes of this paragraph an individual also receives value from the company if he receives in respect of ordinary shares held by him any payment or asset in a winding up or in connection with a dissolution of the company, being a winding up or dissolution falling within section 293(6) of the Taxes Act.

(5) For the purposes of this paragraph an individual also receives value from the company if any person who would, for the purposes of section 291 of the Taxes Act, be treated as connected with the company—

(a) purchases any of its share capital or securities which belong to the individual; or

(b) makes any payment to him for giving up any right in relation to any of the company's share capital or securities.

(6) Where an individual's disposal of shares in a company gives rise to a chargeable event falling within paragraph 3(1)(a) or (b) above, the individual shall not be treated for the purposes of this paragraph as receiving value from the company in respect of the disposal.

(7) In this paragraph "qualifying payment" means—

(a) the payment by any company of such remuneration for service as an officer or employee of that company as may be reasonable in relation to the duties of that office or employment;

(b) any payment or reimbursement by any company of travelling or other expenses wholly, exclusively and necessarily incurred by the individual to whom the payment is made in the performance of duties as an officer or emplyee of that company;

(c) the payment by any company of any interest which represents no more than a reasonable commercial return on money lent to that company;

(d) the payment by any company of any dividend or other distribution which does not exceed a normal return on any investment in shares in or other securities of that company;

(e) any payment for the supply of goods which does not exceed their market value;

(f) any payment for the acquisition of an asset which does not exceed its market value;

(g) the payment by any company, as rent for any property occupied by the company, of an amount not exceeding a reasonable and commercial rent for the property;

(h) any reasonable and necessary remuneration which—

(i) is paid by any company for services rendered to that company in the course of a trade or profession; and

(ii) is taken into account in computing the profits of the trade or profession under Case I or II of Schedule D or would be so taken into account if it fell in a period on the basis of which those profits are assessed under that Schedule;

(i) a payment in discharge of an ordinary trade debt.

(8) For the purposes of this paragraph a company shall be treated as having released or waived a liability if the liability is not discharged within 12 months of the time when it ought to have been discharged.

(9) In this paragraph—

(a) references to a debt or liability do not, in relation to a company, include references to any debt or liability which would be discharged by the making by that company of a qualifying payment; and

(b) references to a benefit or facility do not include references to any benefit or facility provided in circumstances such that, if a payment had been made of an amount equal to its value, that payment would be a qualifying payment.

(10) In this paragraph—

(a) any reference to a payment or disposal to an individual includes a reference to a payment or disposal made to him indirectly or to his order or for his benefit;

(b) any reference to an individual includes a reference to an associate of his; and

(c) any reference to a company includes a reference to a person who at any time in the relevant period is connected with the company, whether or not he is so connected at the material time.

(11) In this paragraph "ordinary trade debt" means any debt for goods or services supplied in the ordinary course of a trade or business where any credit given—

(a) does not exceed six months; and

(b) is not longer than that normally given to customers of the person carrying on the trade or business.

Value received by other persons

14 (1) Sub-paragraph (2) below applies where an individual subscribes for eligible shares ("the shares") in a company and at any time in the seven year period the company or any subsidiary—

(a) repays, redeems or repurchases any of its share capital which belongs to any member other than the individual or an individual falling within sub-paragraph (3) below, or

(b) makes any payment (directly or indirectly) to any such member, or to his order or for his benefit, for the giving up of his right to any of the share capital of the company or subsidiary on its cancellation or extinguishment.

(2) The shares shall be treated for the purposes of this Schedule—

(a) if the repayment, redemption, repurchase or payment in question is made or effected on or before the date of the issue of the shares, as never having been eligible shares; and

(b) if it is made or effected after that date, as ceasing to be eligible shares on the date when it is made or effected.

(3) An individual falls within this sub-paragraph if the repayment, redemption, repurchase or payment in question—

(a) gives rise to a qualifying chargeable event in respect of him, or

(b) causes any relief under Chapter III of Part VII of the Taxes Act attributable to his shares in the company to be withdrawn or reduced by virtue of section 299 or 300(2)(a) of that Act.

(4) In sub-paragraph (3) above "qualifying chargeable event" means—

(a) a chargeable event falling within paragraph 3(1)(a) or (b) above; or

(b) a chargeable event falling within paragraph 3(1)(e) above by virtue of sub-paragraph (1)(b) of paragraph 13 above (as it applies by virtue of sub-paragraph (2)(a) of that paragraph).

(5) Where—

(a) a company issues share capital ("the original shares") of nominal value equal to the authorised minimum (within the meaning of the Companies Act 1985) for the purposes of complying with the requirements of section 117 of that Act (public company not to do business unless requirements as to share capital complied with), and

(b) after the registrar of companies has issued the company with a certificate under section 117, it issues eligible shares,

the preceding provisions of this paragraph shall not apply in relation to any redemption of any of the original shares within 12 months of the date on which those shares were issued.

(6) In relation to companies incorporated under the law of Northern Ireland references in sub-paragraph (5) above to the Companies Act 1985 and to section 117 of that Act shall have effect as references to the Companies (Northern Ireland) Order 1986 and to Article 127 of that Order.

(7) References in this paragraph to a subsidiary of a company are references to a company which at any time in the relevant period is a 51 per cent. subsidiary of the first mentioned company, whether or not it is such a subsidiary at the time of the repayment, redemption, repurchase or payment in question.

Investment-linked loans

15 (1) Where at any time in the relevant period an investment-linked loan is made by any person to an individual who subscribes for eligible shares ("the shares") in a company, the shares shall be treated for the purposes of this Schedule—

(a) if the loan is made on or before the date of the issue of the shares, as never having been eligible shares; and

(b) if the loan is made after that date, as ceasing to be eligible shares on the date when the loan is made.

(2) A loan made by any person to an individual is an investment-linked loan for the purposes of this paragraph if the loan is one which would not have been made, or

would not have been made on the same terms, if the individual had not subscribed for the shares or had not been proposing to do so.

(3) References in this paragraph to the making by any person of a loan to an individual include references—

(a) to the giving by that person of any credit to that individual; and

(b) to the assignment or assignation to that person of any debt due from that individual.

(4) In this paragraph any reference to an individual includes a reference to an associate of his.**]**

[F512Information

Textual Amendments

F512 Sch. 5B paras. 16-19 and cross-headings inserted (with effect in accordance with s. 74(3) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 13 para. 36**

16 (1) Where, in relation to **[**F513any of the relevant shares**]** held by an individual—

(a) a chargeable event falling within paragraph 3(1)(a) or (b) above occurs at any time in the five year period,

(b) a chargeable event falling within paragraph 3(1)(c) or (d) above occurs, or

(c) a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 12(2)(b), 13(1)(b) or 15(1)(b) above,

the individual shall within 60 days of his coming to know of the event give a notice to the inspector containing particulars of the circumstances giving rise to the event.

(2) Where, in relation to **[**F513any of the relevant shares**]** in a company, a chargeable event falling within paragraph 3(1)(e) above occurs by virtue of paragraph 1A(1) or (2), 13(1)(b) or 14(2)(b) above—

(a) the company, and

(b) any person connected with the company who has knowledge of that matter,

shall within 60 days of the event or, in the case of a person within paragraph (b) above, of his coming to know of it, give a notice to the inspector containing particulars of the circumstances giving rise to the event.

(3) A chargeable event falling within paragraph 3(1)(e) above which, but for paragraph 1A(5) above, would occur at any time by virtue of paragraph 1A(1) or (2) above shall be treated for the purposes of sub-paragraph (2) above as occurring at that time.

(4) Where a company has issued a certificate under section 306(2) of the Taxes Act (as applied by paragraph 6 above) in respect of any eligible shares in the company, and the condition in paragraph 1(2)(g) above is not satisfied in relation to the shares—

(a) the company, and

(b) any person connected with the company who has knowledge of that matter,

shall within 60 days of the time mentioned in section 289(3) of the Taxes Act or, in the case of a person within paragraph (b) above, of his coming to know that the condition is not satisfied, give notice to the inspector setting out the particulars of the case.

(5) If the inspector has reason to believe that a person has not given a notice which he is required to give—

(a) under sub-paragraph (1) or (2) above in respect of any chargeable event, or

(b) under sub-paragraph (4) above in respect of any particular case,

the inspector may by notice require that person to furnish him within such time (not being less than 60 days) as may be specified in the notice with such information relating to the event or case as the inspector may reasonably require for the purposes of this Schedule.

(6) Where a claim is made under this Schedule in respect of shares in a company and the inspector has reason to believe that it may not be well founded by reason of any such arrangements as are mentioned in paragraphs 1(2)(d) or 11(1) above, or section 293(8) or 308(2)(e) of the Taxes Act, he may by notice require any person concerned to furnish him within such time (not being less than 60 days) as may be specified in the notice with—

(a) a declaration in writing stating whether or not, according to the information which that person has or can reasonably obtain, any such arrangements exist or have existed;

(b) such other information as the inspector may reasonably require for the purposes of the provision in question and as that person has or can reasonably obtain.

(7) For the purposes of sub-paragraph (6) above, the persons who are persons concerned are—

(a) in relation to paragraph 1(2)(d) above, the claimant, the company and any person controlling the company;

(b) in relation to paragraph 11(1) above, the claimant, the company and any person connected with the company; and

(c) in relation to section 293(8) or 308(2)(e) of the Taxes Act, the company and any person controlling the company;

and for those purposes the references in paragraphs (a) and (b) above to the claimant include references to any person to whom the claimant appears to have made a disposal within marriage of any of the shares in question.

(8) Where deferral relief is attributable to shares in a company—

(a) any person who receives from the company any payment or asset which may constitute value received (by him or another) for the purposes of paragraph 13 above, and

(b) any person on whose behalf such a payment or asset is received,

shall, if so required by the inspector, state whether the payment or asset received by him or on his behalf is received on behalf of any person other than himself and, if so, the name and address of that person.

(9) Where a claim has been made under this Schedule in relation to shares in a company, any person who holds or has held shares in the company and any person on whose behalf any such shares are or were held shall, if so required by the inspector, state—

(a) whether the shares which are or were held by him or on his behalf are or were held on behalf of any person other than himself; and

(b) if so, the name and address of that person.

(10) No obligation as to secrecy imposed by statute or otherwise shall preclude the inspector from disclosing to a company that relief has been given or claimed in respect of a particular number or proportion of its shares.

Textual Amendments

F513 Words in Sch. 5B para. 16(1)(2) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(i)**

Trustees: general

17 (1) Subject to the following provisions of this paragraph, this Schedule shall apply as if—

(a) any reference to an individual included a reference to the trustees of a settlement, and

(b) in relation to any such trustees, the reference in paragraph 1(1) above to any asset were a reference to any asset comprised in any settled property to which this paragraph applies (a "trust asset").

(2) This paragraph applies—

(a) to any settled property in which the interests of the beneficiaries are not interests in possession, if all the beneficiaries are individuals, and

(b) to any settled property in which the interests of the beneficiaries are interests in possession, if any of the beneficiaries are individuals.

(3) If, at the time of the disposal of the trust asset in a case where this Schedule applies by virtue of this paragraph—

(a) the settled property comprising that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, but

(b) not all the beneficiaries are individuals,

only the relevant proportion of the gain which would accrue to the trustees on the disposal shall be taken into account for the purposes of this Schedule as it so applies.

(4) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(a) above unless, immediately after the acquisition of the relevant shares, the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(a) above.

(5) This Schedule shall not apply by virtue of this paragraph in a case where, at the time of the disposal of the trust asset, the settled property which comprises that asset is property to which this paragraph applies by virtue of sub-paragraph (2)(b) above unless, immediately after the acquisition of the relevant shares—

(a) the settled property comprising the shares is also property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, and

(b) if not all the beneficiaries are individuals, the relevant proportion is not less than the proportion which was the relevant proportion at the time of the disposal of the trust asset.

(6) If, at any time, in the case of settled property to which this paragraph applies by virtue of sub-paragraph (2)(b) above, both individuals and others have interests in possession, "the relevant proportion" at that time is the proportion which the amount specified in paragraph (a) below bears to the amount specified in paragraph (b) below, that is—

(a) the total amount of the income of the settled property, being income the interests in which are held by beneficiaries who are individuals, and

(b) the total amount of all the income of the settled property.

(7) Where, in the case of any settled property in which any beneficiary holds an interest in possession, one or more beneficiaries ("the relevant beneficiaries") hold interests not in possession, this paragraph shall apply as if—

(a) the interests of the relevant beneficiaries were a single interest in possession, and

(b) that interest were held, where all the relevant beneficiaries are individuals, by an individual and, in any other case, by a person who is not an individual.

(8) In this paragraph references to interests in possession do not include interests for a fixed term and, except in sub-paragraph (1), references to individuals include any charity.

Trustees: anti-avoidance

18 (1) Paragraphs 13 and 15 above shall have effect in relation to the subscription for shares by the trustees of a settlement as if references to the individual subscribing for the shares were references to—

(a) those trustees;

(b) any individual or charity by virtue of whose interest, at a relevant time, paragraph 17 above applies to the settled property; or

(c) any associate of such an individual, or any person connected with such a charity.

(2) The relevant times for the purposes of sub-paragraph (1)(b) above are the time when the shares are issued and—

(a) in a case where paragraph 13 above applies, the time when the value is received;

(b) in a case where paragraph 15 above applies, the time when the loan is made.

Interpretation

19 (1) For the purposes of this Schedule—

"arrangements" includes any scheme, agreement or understanding, whether or not legally enforceable;

"associate" has the meaning that would be given by subsections (3) and (4) of section 417 of the Taxes Act if in those subsections "relative" did not include a brother or sister;

"eligible shares" has the meaning given by section 289(7) of that Act;

"the five year period", in the case of **[**[F514]any of the relevant shares**]**, means the period of five years beginning with the issue of the shares;

"non-resident" means a person who is neither resident nor ordinarily resident in the United Kingdom;

"ordinary share capital" has the same meaning as in the Taxes Act;

"ordinary shares", in relation to a company, means shares forming part of its ordinary share capital;

"qualifying business activity" has the meaning given by section 289(2) of the Taxes Act;

"qualifying company", in relation to any eligible shares, means a company which, in relation to those shares, is a qualifying company for the purposes of Chapter III of Part VII of that Act;

"the relevant period", in the case of any shares, means the period found by applying section 312(1A)(a) of that Act by reference to the company that issued the shares and by reference to the shares;

F515 . . . . . .

"the seven year period" has the meaning given by section 291(6) of the Taxes Act.

[F516(1A) For the purposes of this Schedule, "the relevant shares", in relation to a case to which this Schedule applies, means the shares which—

(a) are acquired by the investor in making the qualifying investment, and

(b) where the qualifying investment is made before the time at which the original gain accrues, are still held by the investor at that time.

This is subject to sub-paragraphs (1B) and (1D) below.

(1B) If any corresponding bonus shares in the same company are issued to the investor or any person who has acquired any of the relevant shares from the investor on a disposal within marriage, this Schedule shall apply as if references to the relevant shares were to all the shares comprising the relevant shares and the bonus shares so issued.

(1C) In sub-paragraph (1B) above "corresponding bonus shares" means bonus shares which—

(a) are issued in respect of the relevant shares; and

(b) are of the same class, and carry the same rights, as those shares.

(1D) If, in circumstances in which paragraph 8 above applies, new shares are issued in exchange for old shares, references in this Schedule to the relevant shares, so far as they relate to the old shares, shall be construed as references to the new shares and not to the old shares.

(1E) In sub-paragraph (1D) above "new shares" and "old shares" have the same meaning as in paragraph 8 above.**]**

(2) For the purposes of this Schedule, "deferral relief" is attributable to any shares if—

(a) expenditure on the shares has been set under this Schedule against the whole or part of any gain; and

(b) in relation to the shares there has been no chargeable event for the purposes of this Schedule.

(3) In this Schedule—

(a) references (however expressed) to an issue of eligible shares in any company are to any eligible shares in the company that are of the same class and are issued on the same day;

(b) references to a disposal within marriage are references to any disposal to which section 58 applies; and

(c) references to Chapter III of Part VII of the Taxes Act or any provision of that Chapter are to that Chapter or provision as it applies in relation to shares issued on or after 1st January 1994.

(4) For the purposes of this Schedule shares in a company shall not be treated as being of the same class unless they would be so treated if dealt with on the Stock Exchange.

(5) Notwithstanding anything in section 288(5), shares shall not for the purposes of this Schedule be treated as issued by reason only of being comprised in a letter of allotment or similar instrument.**]]**

Textual Amendments

F514 Words in Sch. 5B para. 19(1) substituted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 4(j)**

F515 Words in Sch. 5B para. 19 repealed (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), Sch. 8 para. 3(1), **Sch. 20 Pt. III(18)**

F516 Sch. 5B para. 19(1A)-(1E) inserted (with effect in accordance with s. 73(2) of the amending Act) by Finance Act 1999 (c. 16), **Sch. 8 para. 3(2)**

[F517SCHEDULE 5BA

ENTERPRISE INVESTMENT SCHEME: APPLICATION OF TAPER RELIEF

Textual Amendments

F517 Sch. 5BA inserted (27.7.1999) by Finance Act 1999 (c. 16), s. 72(2), **Sch. 7**

Application of Schedule

1 (1) This Schedule applies where—

(a) a chargeable gain ("the original gain") accrues on the disposal of shares ("the original shares") to which deferral relief or relief under Chapter III of Part VII of the Taxes Act (EIS income tax relief), or both, is attributable;

(b) the whole or part of the original gain is treated as not having accrued at the time of that disposal because of expenditure on shares being set against it under paragraph 2 of Schedule 5B; and

(c) a chargeable gain ("the revived gain") is subsequently treated as accruing in accordance with paragraph 4 of Schedule 5B as a result of the disposal ("the relevant disposal") of shares expenditure on which has been set under paragraph 2 of Schedule 5B against the whole or part of the original gain or the whole or part of a gain derived from the original gain.

(2) This Schedule applies only if the original shares were issued on or after 6th April 1998 and disposed of on or after 6th April 1999.

Taper relief on revived gains

2 (1) Where this Schedule applies, the provisions of paragraphs 3 to 5 below have effect for applying taper relief under section 2A in relation to the revived gain.

(2) Those provisions do not apply to the extent that the revived gain is treated as not having accrued at the time of the relevant disposal because of expenditure being set against it under paragraph 2 of Schedule 5B.

Qualifying holding period

3 (1) The qualifying holding period of the original shares for the purposes of taper relief is the period beginning with the date of issue of the original shares and ending with the date of the relevant disposal.

(2) Sub-paragraph (1) is subject to paragraph 2(4) of Schedule A1 (periods that do not count for taper relief purposes).

Periods that do not count

4 A period—

(a) which falls within the period beginning with the date of issue of the original shares and ending with the date of the relevant disposal, and

(b) during which neither the original shares nor any relevant re-investment shares were held,

does not count for the purposes of taper relief.

Gains on disposal of business or non-business assets

5 (1) The following rules apply to determine whether, or to what extent, the revived gain is for taper relief purposes a gain on the disposal of a business asset or a gain on the disposal of a non-business asset.

(2) The revived gain is treated as a gain on the disposal of an asset which was acquired on the issue of the original shares and disposed of on the date of the relevant disposal.

(3) That asset is treated as being the original shares during the period for which they were held.

(4) That asset is treated as being any relevant re-investment shares during the period for which those shares were held, or so much of that period as is not an overlap period in relation to those shares.

(5) For the purposes of sub-paragraph (4) an "overlap period", in relation to any relevant re-investment shares, means a period during which those shares and also—

(a) any of the original shares, or

(b) any relevant re-investment shares issued before the relevant re-investment shares in question,

are held.

Savings

6 The application of paragraphs 3 to 5 above in relation to the revived gain does not affect the treatment for the purposes of taper relief under section 2A of—

(a) any gain which is treated as accruing in accordance with paragraph 4 of Schedule 5B at the same time as the revived gain, or

(b) any part of a gain where no expenditure was set under paragraph 2 of Schedule 5B against that part of the gain.

Relevant re-investment shares

7 For the purposes of this Schedule—

(a) shares are "re-investment shares" if expenditure on them is set under paragraph 2 of Schedule 5B against all or part of a gain; and

(b) re-investment shares are "relevant re-investment shares", in relation to a revived gain, if—

(i) their disposal results in a gain being treated as accruing under paragraph 4 of Schedule 5B, and

(ii) that gain is the revived gain or a gain from which the revived gain is derived.

Derivation of gains

8 For the purposes of this Schedule a gain ("the later gain") is derived from another gain ("the earlier gain") if—

(a) the later gain is treated as accruing in accordance with paragraph 4 of Schedule 5B on the disposal of any shares, and

(b) expenditure on those shares has been set under paragraph 2 of Schedule 5B against all or part of the earlier gain or a gain which, by virtue of this paragraph, is derived from the earlier gain.

Interpretation

9 Expressions defined for the purposes of Schedule 5B (apart from "the original gain") have the same meaning for the purposes of this Schedule as they have for the purposes of that Schedule.**]**

[F518SCHEDULE 5C

VENTURE CAPITAL TRUSTS: DEFERRED CHARGE ON RE-INVESTMENT

Textual Amendments

F518 Sch. 5C inserted (with effect in accordance with s. 72(8) of the amending Act) by Finance Act 1995 (c. 4), s. 72(4), **Sch. 16**

Application of Schedule

1 (1) This Schedule applies where—

(a) there would (apart from paragraph 2(2)(a) below) be a chargeable gain ("the original gain") accruing to an individual ("the investor") at any time ("the accrual time") on or after 6th April 1995;

(b) that gain is one accruing on the disposal by the investor of any asset or in accordance with paragraphs 4 and 5 of Schedule 5B or paragraphs 4 and 5 below;

(c) the investor makes a qualifying investment; and

(d) the investor is resident or ordinarily resident in the United Kingdom at the accrual time and the time when he makes the qualifying investment and is not, in relation to the qualifying investment, a person to whom sub-paragraph (4) below applies.

(2) The investor makes a qualifying investment for the purposes of this Schedule if—

(a) he subscribes for any shares by reference to which he is given relief under Part I of Schedule 15B to the Taxes Act on any amount;

(b) those shares are issued at a qualifying time; and

(c) where that time is before the accrual time, those shares are still held by the investor at the accrual time;

and in this Schedule "relevant shares", in relation to a case to which this Schedule applies, means any of the shares in a venture capital trust which are acquired by the investor in making the qualifying investment.

(3) In this Schedule "a qualifying time", in relation to any shares subscribed for by the investor, means—

(a) any time in the period beginning twelve months before the accrual time and ending twelve months after the accrual time, or

(b) any such time before the beginning of that period or after it ends as the Board may by notice allow.

(4) This sub-paragraph applies to an individual in relation to a qualifying investment if—

(a) though resident or ordinarily resident in the United Kingdom at the time when he makes the investment, he is regarded for the purposes of any double taxation relief arrangements as resident in a territory outside the United Kingdom; and

(b) were section 151A(1) to be disregarded, the arrangements would have the effect that he would not be liable in the United Kingdom to tax on a gain arising on a disposal, immediately after their acquisition, of the shares acquired in making that investment.

The postponement of the original gain

2 (1) On the making of a claim by the investor for the purposes of this Schedule, so much of the investor's unused qualifying expenditure on relevant shares as—

(a) is specified in the claim, and

(b) does not exceed so much of the original gain as is unmatched,

shall be set against a corresponding amount of the original gain.

(2) Where the amount of any qualifying expenditure on any relevant shares is set under this Schedule against the whole or any part of the original gain—

(a) so much of that gain as is equal to that amount shall be treated as not having accrued at the accrual time; but

(b) paragraphs 4 and 5 below shall apply for determining the gain that is to be treated as accruing on the occurrence of any chargeable event in relation to any of those relevant shares.

(3) For the purposes of this Schedule, but subject to the following provisions of this paragraph—

(a) the investor's qualifying expenditure on any relevant shares is the sum equal to the amount on which he is given relief under Part I of Schedule 15B to the Taxes Act by reference to those shares; and

(b) that expenditure is unused to the extent that it has not already been set under this Schedule against the whole or any part of a chargeable gain.

(4) For the purposes of this paragraph the original gain is unmatched, in relation to any qualifying expenditure on relevant shares, to the extent that it has not had any other amount set against it under this Schedule or Schedule 5B.

Chargeable events

3 (1) Subject to the following provisions of this paragraph, there is for the purposes of this Schedule a chargeable event in relation to any relevant shares if, after the making of the qualifying investment—

(a) the investor disposes of those shares otherwise than by way of a disposal within marriage;

(b) those shares are disposed of, otherwise than by way of a disposal to the investor, by a person who acquired them on a disposal made by the investor within marriage;

(c) there is, in a case where those shares fall within section 151B(3)(c), such an actual or deemed exchange of those shares for any non-qualifying holdings as, under section 135 or 136, requires, or but for section 116 would require, those holdings to be treated for the purposes of this Act as the same assets as those shares;

(d) the investor becomes a non-resident while holding those shares and within the relevant period;

(e) a person who acquired those shares on a disposal within marriage becomes a non-resident while holding those shares and within the relevant period;

(f) the company in which those shares are shares has its approval as a venture capital trust withdrawn in a case to which section 842AA(8) of the Taxes Act does not apply; or

(g) the relief given under Part I of Schedule 15B to the Taxes Act by reference to those shares is withdrawn or reduced in circumstances not falling within any of paragraphs (a) to (f) above.

(2) In sub-paragraph (1) above—

"non-qualifying holdings" means any shares or securities other than any ordinary shares (within the meaning of section 151A) in a venture capital trust; and

"the relevant period", in relation to any relevant shares, means the period of five years beginning with the time when the investor made the qualifying investment by virtue of which he acquired those shares.

(3) For the purposes of sub-paragraph (1) above there shall not be a chargeable event by virtue of sub-paragraph (1)(d) or (e) above in relation to any shares if—

(a) the reason why the person in question becomes a non-resident is that he works in an employment or office all the duties of which are performed outside the United Kingdom, and

(b) he again becomes resident or ordinarily resident in the United Kingdom within the period of three years from the time when he became a non-resident, without having meanwhile disposed of any of those shares;

and, accordingly, no assessment shall be made by virtue of sub-paragraph (1)(d) or (e) above before the end of that period in any case where the condition in paragraph (a) above is satisfied and the condition in paragraph (b) above may be satisfied.

(4) For the purposes of sub-paragraph (3) above a person shall be taken to have disposed of any shares if and only if there has been such a disposal as would, if the person making the disposal had been resident in the United Kingdom, have been a chargeable event in relation to those shares.

(5) Where in any case—

(a) the investor or a person who has acquired any relevant shares on a disposal within marriage dies, and

(b) an event occurs at or after the time of the death which (apart from this sub-paragraph) would be a chargeable event in relation to any relevant shares held by the deceased immediately before his death,

that event shall not be chargeable event in relation to the shares so held.

(6) Without prejudice to the operation of paragraphs 4 and 5 below in a case falling within sub-paragraph (1)(f) above, the references in this paragraph to a disposal shall not include references to the disposal which by virtue of section 151B(6) is deemed to take place in such a case.

Gain accruing on chargeable event

4 (1) On the occurrence of a chargeable event in relation to any relevant shares in relation to which there has not been a previous chargeable event—

(a) a chargeable gain shall be treated as accruing at the time of the event; and

(b) the amount of the gain shall be equal to so much of the original gain as is an amount against which there has under this Schedule been set any expenditure on those shares.

(2) In determining for the purposes of this Schedule any question whether any shares to which a chargeable event relates are shares the expenditure on which has under this Schedule been set against the whole or any part of any gain, the assumptions in sub-paragraph (3) below shall apply and, in a case where the shares are not (within the meaning of section 151B) eligible for relief under section 151A(1), shall apply notwithstanding anything in any of sections 104, 105 and **[**F519106A**]**.

(3) Those assumptions are that—

(a) as between shares acquired by the same person on different days, those acquired on an earlier day are disposed of by that person before those acquired on a later day; and

(b) as between shares in a company that were acquired on the same day, those the expenditure on which has been set under this Schedule against the whole or any part of any gain are disposed of by that person only after he has disposed of any other shares in that company that were acquired by him on that day.

(4) Where at the time of a chargeable event any relevant shares are treated for the purposes of this Act as represented by assets which consist of or include assets other than the relevant shares—

(a) the expenditure on those shares which was set against the gain in question shall be treated, in determining for the purposes of this paragraph the amount of expenditure on each of those assets which is to be treated as having been set against that gain, as apportioned in such manner as may be just and reasonable between those assets; and

(b) as between different assets treated as representing the same relevant shares, the assumptions mentioned in sub-paragraph (3) above shall apply with the necessary modifications in relation to those assets as they would apply in relation to the shares.

Textual Amendments

F519 Word in Sch. 5C para. 4(2) substituted (with effect in accordance with s. 124(7) of the amending Act) by Finance Act 1998 (c. 36), **s. 124(6)**

Persons to whom gain accrues

5 (1) The chargeable gain which accrues in accordance with paragraph 4 above on the occurrence in relation to any relevant shares of a chargeable event shall be treated as accruing, as the case may be—

(a) to the person who makes the disposal,

(b) to the person who holds the shares in question at the time of the exchange or deemed exchange,

(c) to the person who becomes a non-resident,

(d) to the person who holds the shares in question when the withdrawal of the approval takes effect, or

(e) to the person who holds the shares in question when the circumstances arise in respect of which the relief is withdrawn or reduced.

(2) Where—

(a) sub-paragraph (1) above provides for the holding of shares at a particular time to be what identifies the person to whom any chargeable gain accrues, and

(b) at that time, some of those shares are held by the investor and others are held by a person to whom the investor has transferred them by a disposal within marriage,

the amount of the chargeable gain accruing by virtue of paragraph 4 above shall be computed separately in relation to the investor and that person without reference to the shares held by the other.

Interpretation

6 (1) In this Schedule "non-resident" means a person who is neither resident nor ordinarily resident in the United Kingdom.

(2) In this Schedule references to a disposal within marriage are references to any disposal to which section 58 applies.

(3) Notwithstanding anything in section 288(5), shares shall not for the purposes of this Schedule be treated as issued by reason only of being comprised in a letter of allotment or similar instrument.**]**

[F520]SCHEDULE 6

Sections 163, 164.

. . . . . .

Textual Amendments

F520 Sch. 6 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with s. 140(2) of, Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), s. 140(2)(c), **Sch. 27 Pt. III(31)** (with s. 140(1))

SCHEDULE 7

Section 165.

RELIEF FOR GIFTS OF BUSINESS ASSETS

PART I

AGRICULTURAL PROPERTY AND SETTLED PROPERTY

Agricultural property

1 (1) This paragraph applies where—

(a) there is a disposal of an asset which is, or is an interest in, agricultural property within the meaning of Chapter II of Part V of the [M124]Inheritance Tax Act 1984 (inheritance tax relief for agricultural property), and

(b) apart from this paragraph, the disposal would not fall within section 165(1) by reason only that the agricultural property is not used for the purposes of a trade carried on as mentioned in section 165(2)(a).

(2) Where this paragraph applies, section 165(1) shall apply in relation to the disposal if the circumstances are such that a reduction in respect of the asset—

(a) is made under Chapter II of Part V of the Inheritance Tax Act 1984 in relation to a chargeable transfer taking place on the occasion of the disposal, or

(b) would be so made if there were a chargeable transfer on that occasion, or

(c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).

Marginal Citations

M124 1984 c. 51.

Settled property

2 (1) If—

(a) the trustees of a settlement make a disposal otherwise than under a bargain at arm's length of an asset within sub-paragraph (2) below, and

(b) a claim for relief under section 165 is made by the trustees and the person who acquires the asset ("the transferee") or, where the trustees of a settlement are also the transferee, by the trustees making the disposal alone,

then, subject to sections 165(3), 166, 167 and 169, section 165(4) shall apply in relation to the disposal.

(2) An asset is within this sub-paragraph if—

(a) it is, or is an interest in, an asset used for the purposes of a trade, profession or vocation carried on by—

(i) the trustees making the disposal, or

(ii) a beneficiary who had an interest in possession in the settled property immediately before the disposal, or

(b) it consists of shares or securities of a trading company, or of the holding company of a trading group, where—

(i) the shares or securities are neither **[**F521listed**]** on a recognised stock exchange nor dealt in on the Unlisted Securities Market, or

(ii) not less than 25 per cent. of the voting rights exercisable by shareholders of the company in general meeting are exercisable by the trustees at the time of the disposal.

(3) Where section 165(4) applies by virtue of this paragraph, references to the trustees shall be substituted for the references in section 165(4)(a) to the transferor; and where it applies in relation to a disposal which is deemed to occur by virtue of section 71(1) or 72(1) section 165(7) shall not apply.

Textual Amendments

F521 Word in Sch. 7 para. 2(2)(b)(i) substituted (with effect in accordance with Sch. 38 para. 10(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 10(2)(f)**

3 (1) This paragraph applies where—

(a) there is a disposal of an asset which is, or is an interest in, agricultural property within the meaning of Chapter II of Part V of the M125Inheritance Tax Act 1984, and

(b) apart from this paragraph, the disposal would not fall within paragraph 2(1)(a) above by reason only that the agricultural property is not used for the purposes of a trade as mentioned in paragraph 2(2)(a) above.

(2) Where this paragraph applies paragraph 2(1) above shall apply in relation to the disposal if the circumstances are such that a reduction in respect of the asset—

(a) is made under Chapter II of Part V of the Inheritance Tax Act 1984 in relation to a chargeable transfer taking place on the occasion of the disposal, or

(b) would be so made if there were a chargeable transfer on that occasion, or

(c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).

Marginal Citations

M125 1984 c. 51.

PART II

REDUCTIONS IN HELD-OVER GAIN

Application and interpretation

4 (1) The provisions of this Part of this Schedule apply in cases where a claim for relief is made under section 165.

(2) In this Part of this Schedule—

(a) "the principal provision" means section 165(2), or, as the case may require, sub-paragraph (2) of paragraph 2 above,

(b) "shares" includes securities,

(c) "the transferor" has the same meaning as in section 165 except that, in a case where paragraph 2 above applies, it refers to the trustees mentioned in that paragraph, and

(d) "unrelieved gain", in relation to a disposal, has the same meaning as in section 165(7).

(3) In this Part of this Schedule—

(a) any reference to a disposal of an asset is a reference to a disposal which falls within subsection (1) of section 165 by virtue of subsection (2)(a) of that section or, as the case may be, falls within sub-paragraph (1) of paragraph 2 above by virtue of sub-paragraph (2)(a) of that paragraph, and

(b) any reference to a disposal of shares is a reference to a disposal which falls within subsection (1) of section 165 by virtue of subsection (2)(b) of that section or, as the case may be, falls within sub-paragraph (1) of paragraph 2 above by virtue of sub-paragraph (2)(b) of that paragraph.

(4) In relation to a disposal of an asset or of shares, any reference in the following provisions of this Part of this Schedule to the held-over gain is a reference to the held-over gain on that disposal as determined under subsection (6) or, where it applies, subsection (7) of section 165.

Reductions peculiar to disposals of assets

5 (1) If, in the case of a disposal of an asset, the asset was not used for the purposes of the trade, profession or vocation referred to in paragraph (a) of the principal provision throughout the period of its ownership by the transferor, the amount of the held-over gain shall be reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the number of days in that period of ownership during which the asset was so used, and

B is the number of days in that period.

(2) This paragraph shall not apply where the circumstances are such that a reduction in respect of the asset—

(a) is made under Chapter II of Part V of the [M126]Inheritance Tax Act 1984 in relation to a chargeable transfer taking place on the occasion of the disposal, or

(b) would be so made if there were a chargeable transfer on that occasion, or

(c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).

Marginal Citations
M126 1984 c. 51.

6 (1) If, in the case of a disposal of an asset, the asset is a building or structure and, over the period of its ownership by the transferor or any substantial part of that period, part of the building or structure was, and part was not, used for the purposes of the trade, profession or vocation referred to in paragraph (a) of the principal provision, there shall be determined the fraction of the unrelieved gain on the disposal which it is just and reasonable to apportion to the part of the asset which was so used, and the amount of the held-over gain (as reduced, if appropriate, under paragraph 5 above) shall be reduced by multiplying it by that fraction.

(2) This paragraph shall not apply where the circumstances are such that a reduction in respect of the asset—

(a) is made under Chapter II of Part V of the Inheritance Tax Act 1984 in relation to a chargeable transfer taking place on the occasion of the disposal, or

(b) would be so made if there were a chargeable transfer on that occasion, or

(c) would be so made but for section 124A of that Act (assuming, where there is no chargeable transfer on that occasion, that there were).

Reduction peculiar to disposal of shares

7 (1) If in the case of a disposal of shares assets which are not business assets are included in the chargeable assets of the company whose shares are disposed of, or, where that company is the holding company of a trading group, in the group's chargeable assets, and either—

(a) at any time within the period of 12 months before the disposal not less than 25 per cent. of the voting rights exercisable by shareholders of the company in general meeting are exercisable by the transferor, or

(b) the transferor is an individual and, at any time within that period, the company is his **[**[F522]personal company**]**,

the amount of the held-over gain shall be reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the market value on the date of the disposal of those chargeable assets of the company or of the group which are business assets, and

B is the market value on that date of all the chargeable assets of the company, or as the case may be of the group.

(2) For the purposes of this paragraph—

(a) an asset is a business asset in relation to a company or a group if it is or is an interest in an asset used for the purposes of a trade, profession or vocation carried on by the company, or as the case may be by a member of the group; and

(b) an asset is a chargeable asset in relation to a company or a group at any time if, on a disposal at that time, a gain accruing to the company, or as the case may be to a member of the group, would be a chargeable gain.

(3) Where the shares disposed of are shares of the holding company of a trading group, then for the purposes of this paragraph—

(a) the holding by one member of the group of the ordinary share capital of another member shall not count as a chargeable asset, and

(b) if the whole of the ordinary share capital of a 51 per cent. subsidiary of the holding company is not owned directly or indirectly by that company, the value of the chargeable assets of the subsidiary shall be taken to be reduced by multiplying it by the fraction—

$$\frac{A}{B}$$

where—

A is the amount of the ordinary share capital of the subsidiary owned directly or indirectly by the holding company, and

B is the whole of that share capital.

(4) Expressions used in sub-paragraph (3) above have the same meanings as in section 838 of the Taxes Act.

Textual Amendments

F522 Words in Sch. 7 para. 7(1) substituted (27.7.1993 with effect in relation to any disposal made on or after 16.3.1993 as mentioned in s. 87(2)) by 1993 c. 34, s. 87, **Sch. 7 Pt. I para. 1(1)**

Reduction where gain partly relieved by retirement relief

F523 8 . . . . . .

Textual Amendments

F523 Sch. 7 para. 8 repealed (with effect in relation to disposals in the year 2003-04 and subsequent years of assessment in accordance with Sch. 27 Pt. III(31) of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(31)**

[F524 SCHEDULE 7A

Section 177A.

RESTRICTION ON SET-OFF OF PRE-ENTRY LOSSES

Textual Amendments

F524 Sch. 7A inserted (27.7.1993 with effect as mentioned in s. 88(3) of the amending Act) by 1993 c. 34, c. 88(2), Sch. 8

Application and construction of Schedule

1 (1) This Schedule shall have effect, in the case of a company which is or has been a member of a group of companies ("the relevant group"), in relation to any pre-entry losses of that company.

(2) In this Schedule "pre-entry loss", in relation to any company, means—

(a) any allowable loss that accrued to that company at a time before it became a member of the relevant group; or

(b) the pre-entry proportion of any allowable loss accruing to that company on the disposal of any pre-entry asset;

and for the purposes of this Schedule the pre-entry proportion of any loss shall be calculated in accordance with paragraphs 2 to 5 below.

(3) In this Schedule "pre-entry asset", in relation to any disposal, means (subject to sub-paragraph (4) below) any asset which was held, at the time immediately before it became a member of the relevant group, by any company (whether or not the one which makes the disposal) which is or has at any time been a member of that group.

(4) Subject to paragraph 3 below, an asset is not a pre-entry asset if—

(a) the company which held the asset at the time it became a member of the relevant group is not the company which makes the disposal; and

(b) since that time that asset has been disposed of otherwise than by a disposal to which section 171 applies;

but (without prejudice to sub-paragraph (8) below) where, on a disposal to which section 171 does not apply, any asset would cease to be a pre-entry asset by virtue of this sub-paragraph but the company making the disposal retains any interest in or over the asset in question, that interest shall be a pre-entry asset for the purposes of this Schedule.

(5) References in this Schedule, in relation to a pre-entry asset, to the relevant time are references to the time when the company by reference to which that asset is a pre-entry asset became a member of the relevant group; and for the purposes of this Schedule—

(a) where a company has become a member of the relevant group on more than one occasion, an asset is a pre-entry asset by reference to that company if it would be a pre-entry asset by reference to that company in respect of any one of those occasions; but

(b) references in the following provisions of this Schedule to the time when a company became a member of the relevant group, in relation to assets held on more than one such occasion as is mentioned in paragraph (a) above, are references to the later or latest of those occasions.

(6) Subject to so much of sub-paragraph (6) of paragraph 9 below as requires groups of companies to be treated as separate groups for the purposes of that paragraph, if—

(a) the principal company of a group of companies ("the first group") has at any time become a member of another group ("the second group") so that the two groups are treated as the same by virtue of subsection (10) of section 170, and

(b) the second group, together in pursuance of that subsection with the first group, is the relevant group,

then, except where sub-paragraph (7) below applies, the members of the first group shall be treated for the purposes of this Schedule as having become members of the relevant group at that time, and not by virtue of that subsection at the times when they became members of the first group.

(7) This sub-paragraph applies where—

(a) the persons who immediately before the time when the principal company of the first group became a member of the second group owned the shares comprised in the issued share capital of the principal company of the first group are the same as the persons who, immediately after that time, owned the shares comprised in the issued share capital of the principal company of the relevant group; and

(b) the company which is the principal company of the relevant group immediately after that time—

(i) was not the principal company of any group immediately before that time; and

(ii) immediately after that time had assets consisting entirely, or almost entirely, of shares comprised in the issued share capital of the principal company of the first group.

(8) For the purposes of this Schedule, but subject to paragraph 3 below—

(a) an asset acquired or held by a company at any time and an asset held at a later time by that company, or by any company which is or has been a member of the same group of companies as that company, shall be treated as the same asset if the value of the second asset is derived in whole or in part from the first asset; and

(b) if—

(i) any asset is treated (whether by virtue of paragraph (a) above or otherwise) as the same as an asset held by a company at a later time, and

(ii) the first asset would have been a pre-entry asset in relation to that company,

the second asset shall also be treated as a pre-entry asset in relation to that company;

and paragraph (a) above shall apply, in particular, where the second asset is a freehold and the first asset is a leasehold the lessee of which acquires the reversion.

(9) In determining for the purposes of this Schedule whether any allowable loss accruing to a company under section 116(10)(b) is a loss that accrued before the company became a member of the relevant group, any loss so accruing shall be deemed to have accrued at the time of the relevant transaction within the meaning of section 116(2).

(10) In determining for the purposes of this Schedule whether any allowable loss accruing to a company on a disposal under section 212 is a loss that accrued before the

company became a member of the relevant group, the provisions of section 213 shall be disregarded.

Pre-entry proportion of losses on pre-entry assets

2 (1) Subject to paragraphs 3 to 5 below, the pre-entry proportion of an allowable loss accruing on the disposal of a pre-entry asset shall be whatever would be the allowable loss accruing on that disposal if that loss were the sum of the amounts determined, for every item of relevant allowable expenditure, according to the following formula—

$$A \times \frac{B}{C} \times \frac{D}{E}$$

(2) In sub-paragraph (1) above, in relation to any disposal of a pre-entry asset—

A is the total amount of the allowable loss;

[[F525]B is the amount of the item of relevant allowable expenditure for which an amount falls to be determined under this paragraph;

C is the total amount of all the relevant allowable expenditure;**]**

D is the length of the period beginning with the relevant pre-entry date and ending with the relevant time or, if that date is after that time, nil; and

E is the length of the period beginning with the relevant pre-entry date and ending with the day of the disposal.

(3) In sub-paragraph (2) above "the relevant pre-entry date", in relation to any item of relevant allowable expenditure, means whichever is the later of—

(a) the date on which that item of expenditure is, or (on the **[**[F526]assumptions applying by virtue of sub-paragraphs (4) to (6B)**]** below) would be, treated for the purposes of section 54 as having been incurred; and

(b) 1st April 1982.

(4) Where any asset ("the second asset") is treated by virtue of section 127 as the same as another asset ("the first asset") previously held by any company, this paragraph and (so far as applicable) paragraph 3 below shall have effect, [F527]... —

(a) as if any item of relevant allowable expenditure consisting in consideration given for the acquisition of the second asset had been incurred at the same time as the expenditure consisting in the consideration for the acquisition of the first asset; and

(b) where there is more than one such time as if that item were incurred at those different times in the same proportions as the consideration for the acquisition of the first asset.

(5) Without prejudice to sub-paragraph (4) above, this paragraph shall have effect in relation to any asset which—

(a) was held by a company at the time when it became a member of the relevant group, and

(b) is treated as having been acquired by that company for such a consideration as secured that on the disposal in pursuance of which it was acquired neither a gain nor a loss accrued,

as if that company and every person who acquired that asset or the equivalent asset at a material time had been the same person and, accordingly, as if the asset had been acquired by that company when it or the equivalent asset was acquired by the first of those persons to have acquired it at a material time and the time at which any expenditure had been incurred were to be determined accordingly.

(6) In sub-paragraph (5) above, the reference, in relation to any asset, to a material time is a reference to any time which—

(a) is before the occasion on which the company in question is treated as having acquired the asset for such a consideration as is mentioned in that sub-paragraph; and

(b) is or is after the last occasion before that occasion on which any person acquired that asset or the equivalent asset otherwise than by virtue of an acquisition which—

(i) is treated as an acquisition for such a consideration; or

(ii) is the acquisition by virtue of which any asset is treated as the equivalent asset;

and this paragraph shall have effect in relation to any asset to which that sub-paragraph applies without regard to the provisions of section 56(2).

[[F528](6A) Notwithstanding anything in section 56(2), where in the case of the disposal of any pre-entry asset—

(a) any company has at any time between the relevant time and the time of the disposal acquired that asset or the equivalent asset, and

(b) the acquisition was either an acquisition in pursuance of a disposal on which there is treated by virtue of section 171 as having been neither a gain nor a loss accruing or an acquisition by virtue of which an asset is treated as the equivalent asset,

the items of relevant allowable expenditure and the times when those items shall be treated as having been incurred shall be determined for the purposes of this paragraph on the assumptions specified in sub-paragraph (6B) below.

(6B) Those assumptions are that—

(a) the company by reference to which the asset in question is a pre-entry asset, and

(b) the company mentioned in sub-paragraph (6A) above and every other company which has made an acquisition which, in relation to the disposal of that asset, falls within that sub-paragraph,

were the same person and, accordingly, that the pre-entry asset had been acquired by the company disposing of it at the time when it or the equivalent asset would have been treated for the purposes of this paragraph as acquired by the company mentioned in paragraph (a) above.

(7) In sub-paragraphs (5) to (6B) above the references to the equivalent asset, in relation to another asset acquired or disposed of by any company, are references to any asset which falls in relation to that company to be treated (whether by virtue of paragraph 1(8) above or otherwise) as the same as the other asset or which would fall to be so treated after applying, as respects other assets, the assumptions for which those sub-paragraphs provide.**]**

(8) The preceding provisions of this paragraph and (so far as applicable) paragraph 3 below shall have effect where—

(a) a loss accrues to any company under section 116(10)(b), and

(b) the old asset consists in or is treated for the purposes of that paragraph as including pre-entry assets,

as if the disposal on which the loss accrues were that disposal of the old asset which is assumed to have been made for the purposes of the calculation required by section 116(10)(a).

[F529(8A) Where by virtue of section 55(8) the allowable loss accruing on the disposal of a pre-entry asset, or any part of the loss, is attributable to an amount ("the rolled-up amount") of rolled-up indexation (as defined in section 55(9) to (11)), then, for the purposes of this paragraph—

(a) the total amount of all the relevant allowable expenditure shall be treated as increased by the rolled-up amount, and

(b) the amount of each item of relevant allowable expenditure shall be treated as increased by so much (if any) of the rolled-up amount as is attributable to that item.

(8B) Where—

(a) section 56(3) applies on the disposal of a pre-entry asset on which an allowable loss accrues, and

(b) in accordance with that subsection, the total amount of all the relevant allowable expenditure is reduced by any amount ("the global reduction"),

the amount of each item of relevant allowable expenditure shall be treated for the purposes of this paragraph as reduced by so much (if any) of the global reduction as is attributable to that item.**]**

(9) In this paragraph—

F530 . . . . . .

"relevant allowable expenditure", in relation to any allowable loss, means the expenditure which falls by virtue of section 38(1)(a) or (b) to be taken into account in the computation of that loss.

Textual Amendments

F525 Words in Sch. 7A para. 2(2) substituted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(8)(a)** (with Sch. 12)

F526 Words in Sch. 7A para. 2(3)(a) substituted (with effect in accordance with s. 94(4) of the amending Act) by Finance Act 1994 (c. 9), **s. 94(2)**

F527 Words in Sch. 7A para. 2(4) repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(8)(b), **Sch. 26 Pt. V(8)** (with Sch. 12)

F528 Sch. 7A para. 2(6A)(6B)(7) substituted for Sch. 7A para. 2(7) (with effect in accordance with s. 94(4) of the amending Act) by Finance Act 1994 (c. 9), **s. 94(2)**

F529 Sch. 7A para. 2(8A)(8B) inserted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(8)(c)** (with Sch. 12)

F530 Words in Sch. 7A para. 2(9) repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(8)(d), **Sch. 26 Pt. V(8)** (with Sch. 12)

Disposals of pooled assets

3 (1) This paragraph shall apply (subject to paragraphs 4 and 5 below) where any assets acquired by any company fall to be treated with other assets as indistinguishable parts of the same asset ("a pooled asset") and the whole or any part of that asset is referable to pre-entry assets.

(2) For the purposes of this Schedule, where a pooled asset has at any time contained a pre-entry asset—

(a) the pooled asset shall be treated, until all the pre-entry assets included in that asset have (on the assumptions for which this paragraph provides) been disposed of, as incorporating a part which is referable to pre-entry assets; and

(b) the size of that part shall be determined in accordance with the following provisions of this paragraph.

(3) Where there is a disposal of any part of a pooled asset and the proportion of the asset which is disposed of does not exceed the proportion of that asset which is represented by any part of it which is not, at the time of the disposal, referable to pre-entry assets, that disposal shall be deemed for the purposes of this Schedule to be confined to assets which are not pre-entry assets so that—

(a) except where paragraph 4(2) below applies, no part of any loss accruing on that disposal shall be deemed to be a pre-entry loss, and

(b) the part of the pooled asset which after the disposal is to be treated as referable to pre-entry assets shall be correspondingly increased.

(4) Where there is a disposal of any part of a pooled asset and the proportion of the asset which is disposed of does exceed the proportion of that asset mentioned in sub-paragraph (3) above, that disposal shall be deemed for the purposes of this Schedule to relate to pre-entry assets only so far as required for the purposes of the excess, so that—

(a) any loss accruing on that disposal shall be deemed for the purposes of this Schedule to be an allowable loss on the disposal of a pre-entry asset;

(b) the pre-entry proportion of that loss shall be deemed (except where paragraph 4(3) below applies) to be the amount (so far as it does not exceed the amount of the loss actually accruing) which would have been the pre-entry proportion under paragraph 2 above of any loss accruing on the disposal of the excess if the excess were a separate asset; and

(c) the pooled asset shall be treated after the disposal as referable entirely to pre-entry assets.

(5) Where there is a disposal of the whole of a pooled asset or of any part of a pooled asset which, at the time of the disposal, is referable entirely to pre-entry assets, paragraphs (a) and (b) of sub-paragraph (4) above shall apply to the disposal of the asset or the part as they apply in relation to the assumed disposal of the excess mentioned in that sub-paragraph but, in the case of the disposal of the whole of a pooled asset only a part of which is referable to pre-entry assets, as if the reference in paragraph (b) of that sub-paragraph to the excess were a reference to that part.

(6) For the purpose of determining, under sub-paragraph (4) or (5) above, what would have been the pre-entry proportion of any loss accruing on the disposal of any assets as a separate asset it shall be assumed that none of the assets treated as comprised in that asset has ever been comprised in a pooled asset with any assets other than those which are taken to constitute that separate asset for the purposes of the determination.

(7) The assets which are comprised in any asset which is treated for any of the purposes of this paragraph as a separate asset shall be identified on the following assumptions, that is to say—

(a) that assets are disposed of in the order of the dates which for the purposes of paragraph 2 above are the relevant pre-entry dates in relation to the consideration for their acquisition;

(b) subject to that, that assets with earlier relevant times are disposed of before those with later relevant times;

(c) that disposals made when a company was not a member of the relevant group are made in accordance with the preceding provisions of this paragraph, as they have effect in relation to the group of companies of which the company was a member at the time of the disposal or, as the case may be, of which it had most recently been a member before that time; and

(d) subject to paragraphs (a) to (c) above, that a company disposes of assets in the order in which it acquired them.

(8) Where in the case of any asset there is more than one date which is the relevant pre-entry date in relation to the consideration for its acquisition, the date taken into account for the purposes of sub-paragraph (7)(a) above shall be the date which is the earlier or earliest of those dates if any date which is the relevant pre-entry date in relation to the acquisition of an option to acquire that asset is disregarded.

(9) In applying the formula set out in paragraph 2(1) above in relation to the disposal of an asset which is treated for any of the purposes of this paragraph as comprised in a separate asset—

(a) the amount or value of any consideration for the acquisition or disposal of that asset; and

(b) the incidental costs of the acquisition or disposal of that asset,

shall be determined (to the exclusion of any apportionment under section 129 or 130) by apportioning any consideration or costs relating to both that asset and other assets acquired or disposed of at the same time according to the proportion that is borne by that asset to all the assets to which the consideration or costs related.

(10) Where—

(a) any asset ("the latest asset") falls (whether by virtue of paragraph 1(8) above or otherwise) to be treated as acquired at the same time as another asset ("the original asset") which was acquired before the latest asset, and

(b) the latest asset is either comprised in a pooled asset a part of which is referable to pre-entry assets or is or includes an asset which is to be treated as so comprised,

sub-paragraph (7) above shall apply not only in relation to the latest asset as if it were the original asset but also, in the first place, for identifying the asset which is to be treated as the original asset for the purposes of this paragraph.

(11) Sub-paragraphs (3)(b) and (4)(c) above shall have effect in relation to any disposal without prejudice to the effect of any subsequent acquisition of assets falling to be treated as part of a pooled asset on the determination of whether, and to what extent, any part of that pooled asset is to be treated as referable to pre-entry assets.

Rule to prevent pre-entry losses on pooled assets being treated as post-entry losses

4 (1) This paragraph shall apply if—

(a) there is a disposal of any part of a pooled asset which for the purposes of paragraph 3 above is treated as incorporating a part which is referable to pre-entry assets;

(b) the assets disposed of are or include assets ("the post-entry element of the disposal") which for the purposes of that paragraph are treated as having been incorporated in the part of the pooled asset which is not referable to pre-entry assets;

(c) an allowable loss ("the actual loss") accrues on the disposal; and

(d) the amount which in computing the allowable loss is allowed as a deduction of relevant allowable expenditure ("the expenditure actually allowed") exceeds the relevant allowable expenditure attributable to the post-entry element of the disposal.

(2) Subject to sub-paragraph (6) below, where the post-entry element of the disposal comprises all of the assets disposed of—

(a) the actual loss shall be treated for the purposes of this Schedule as a loss accruing on the disposal of a pre-entry asset; and

(b) the pre-entry proportion of that loss shall be treated as being the amount (so far as it does not exceed the amount of the actual loss) by which the expenditure actually allowed exceeds the relevant allowable expenditure attributable to the post-entry element of the disposal.

(3) Subject to sub-paragraph (6) below, where—

(a) the actual loss is treated by virtue of paragraph 3 above as a loss accruing on the disposal of a pre-entry asset, and

(b) the expenditure actually allowed exceeds the actual cost of the assets to which the disposal is treated as relating,

the pre-entry proportion of the loss shall be treated as being the amount which (so far as it does not exceed the amount of the actual loss) is equal to the sum of that excess and what would, apart from this paragraph and paragraph 5 below, be the pre-entry proportion of the loss accruing on the disposal.

(4) For the purposes of sub-paragraph (3) above the actual cost of the assets to which the disposal is treated as relating shall be taken to be the sum of—

(a) the relevant allowable expenditure attributable to the post-entry element of the disposal; and

(b) the amount which, in computing the pre-entry proportion of the loss in accordance with paragraph 3(4)(b) and (6) above, would be treated for the purposes of C in the formula in paragraph 2(1) above as the total amount allowable as a deduction of relevant allowable expenditure in respect of such of the assets disposed of as are treated as having been incorporated in the part of the pooled asset which is referable to pre-entry assets.

(5) Without prejudice to sub-paragraph (6) below, where sub-paragraph (2) or (3) above applies for the purpose of determining the pre-entry proportion of any loss, no election shall be capable of being made under paragraph 5 below for the purpose of enabling a different amount to be taken as the pre-entry proportion of that loss.

(6) Where—

(a) the pre-entry proportion of the loss accruing to any company on the disposal of any part of a pooled asset falls to be determined under sub-paragraph (2) or (3) above,

(b) the amount determined under that sub-paragraph exceeds the amount determined under sub-paragraph (7) below ("the alternative pre-entry loss"), and

(c) the company makes an election for the purposes of this sub-paragraph,

the pre-entry proportion of the loss determined under sub-paragraph (2) or (3) above shall be reduced to the amount of the alternative pre-entry loss.

(7) For the purposes of sub-paragraph (6) above the alternative pre-entry loss is whatever apart from this paragraph would have been the pre-entry proportion of the loss on the disposal in question, if for the purposes of this Schedule the identification of the assets disposed of were to be made disregarding the part of the pooled asset which was not referable to pre-entry assets, except to the extent (if any) by which the part referable to pre-entry assets fell short of what was disposed of.

(8) An election for the purposes of sub-paragraph (6) above with respect to any loss shall be made by the company to which the loss accrued by notice to the inspector given within—

(a) the period of two years beginning with the end of the accounting period of that company in which the disposal is made on which the loss accrues; or

(b) such longer period as the Board may by notice allow;

and paragraph 5 below may be taken into account under sub-paragraph (7) above in determining the amount of the alternative pre-entry loss as if an election had been made under that paragraph but shall be so taken into account only if the election for the purposes of sub-paragraph (6) above contains an election corresponding to the election that, apart from this paragraph, might have been made under that paragraph.

(9) For the purposes of this paragraph the relevant allowable expenditure attributable to the post-entry element of the disposal shall be the amount which, in computing any allowable loss accruing on a disposal of that element as a separate asset, would have been allowed as a deduction of relevant allowable expenditure if none of the assets comprised in that element had ever been comprised in a pooled asset with any assets other than those which are taken to constitute that separate asset for the purposes of this sub-paragraph.

(10) For the purpose of identifying the assets which are to be treated for the purposes of sub-paragraph (9) above as comprised in the post-entry element of the disposal, a company shall be taken to dispose of assets in the order in which it acquired them.

(11) Paragraph 3(9) above shall apply for the purposes of sub-paragraph (9) above as it applies for the purposes of the application as mentioned in paragraph 3(9) above of the formula so mentioned; and paragraph 3(10) above shall apply for the purposes of this paragraph in relation to sub-paragraph (10) above as it applies for the purposes of paragraph 3 above in relation to sub-paragraph (7) of that paragraph.

(12) In this paragraph references to an amount allowed as a deduction of relevant allowable expenditure are references to the amount falling to be so allowed in accordance with section 38(1)(a) and (b) and (so far as applicable) section 42, [F531]....

[F532](13) . . . . . .

(14) Nothing in this paragraph shall affect the operation of the rules contained in paragraph 3 above for determining, for any purposes other than those of sub-paragraph (7) above, how much of any pooled asset at any time consists of a part which is referable to pre-entry assets.

Textual Amendments

F531 Words in Sch. 7A para. 4(12) repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(9)(a), **Sch. 26 Pt. V(8)** (with Sch. 12)

F532 Sch. 7A para. 4(13) repealed (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), s. 93(9)(b), **Sch. 26 Pt. V(8)** (with Sch. 12)

Alternative calculation by reference to market value

5 (1) Subject to paragraph 4(5) above and the following provisions of this paragraph, if—

(a) an allowable loss accrues on the disposal by any company of any pre-entry asset; and

(b) that company makes an election for the purposes of this paragraph in relation to that loss,

the pre-entry proportion of that loss (instead of being the amount determined under the preceding provisions of this Schedule) shall be whichever is the smaller of the amounts mentioned in sub-paragraph (2) below.

(2) Those amounts are—

(a) the amount of any loss which would have accrued if that asset had been disposed of at the relevant time at its market value at that time; and

(b) the amount of the loss accruing on the disposal mentioned in sub-paragraph (1)(a) above.

[F533(2A) In determining for the purposes of sub-paragraph (2)(a) above the amount of any loss which would have accrued if the asset had been disposed of at the relevant time at its market value at that time—

(a) it shall be assumed that the amendments of this Act made by section 93(1) to (5) of the Finance Act 1994 (indexation losses) had effect in relation to that disposal and, accordingly,

(b) references in those amendments and in subsection (11) of that section to 30th November 1993 shall be read as references to the day on which the relevant time falls.**]**

(3) Where no loss would have accrued on the disposal assumed for the purposes of sub-paragraph (2)(a) above, the loss accruing on the disposal mentioned in sub-paragraph (1)(a) above shall be deemed not to have a pre-entry proportion.

(4) Sub-paragraph (5) below shall apply where—

(a) an election is made for the purposes of this paragraph in relation to any loss accruing on the disposal ("the real disposal") of the whole or any part of a pooled asset; and

(b) the case is one in which (but for the election) paragraph 3 above would apply for determining the pre-entry proportion of a loss accruing on the real disposal.

(5) In a case falling within sub-paragraph (4) above, this paragraph shall have effect as if the amount specified in sub-paragraph (2)(a) above were to be calculated—

(a) on the basis that the disposal which is assumed to have taken place was a disposal of all the assets falling within sub-paragraph (6) below; and

(b) by apportioning any loss that would have accrued on that disposal between—

(i) such of the assets falling within paragraph (6) below as are assets to which the real disposal is treated as relating, and

(ii) the remainder of the assets so falling,

according to the proportions of any pooled asset whose disposal is assumed which would have been, respectively, represented by assets mentioned in sub-paragraph (i) above and by assets mentioned in sub-paragraph (ii) above,

and where assets falling within sub-paragraph (6) below have different relevant times there shall be assumed to have been a different disposal at each of those times.

(6) Assets fall within this sub-paragraph if—

(a) immediately before the time which is the relevant time in relation to those assets, they were comprised in a pooled asset which consisted of or included assets which fall to be treated for the purposes of paragraph 3 above as—

(i) comprised in the part of the pooled asset referable to pre-entry assets; and

(ii) disposed of on the real disposal;

(b) they were also comprised in such a pooled asset immediately after that time; and

(c) the pooled asset in which they were so comprised immediately after that time was held by a member of the relevant group.

(7) Where—

(a) an election is made under paragraph 4(6) above requiring the determination by reference to this paragraph of the alternative pre-entry loss accruing on the disposal of any assets comprised in a pooled asset, and

(b) in pursuance of that election any amount of the loss that would have accrued on an assumed disposal is apportioned in accordance with sub-paragraph (5) above to assets ("the relevant assets") which—

(i) are treated for the purposes of that determination as assets to which the disposal related, but

(ii) otherwise continue after the disposal to be treated as incorporated in the part of that pooled asset which is referable to pre-entry assets,

then, on any further application of this paragraph for the purpose of determining the pre-entry proportion of the loss accruing on a subsequent disposal of assets comprised in that pooled asset, that amount (without being apportioned elsewhere) shall be deducted from so much of the loss accruing on the same assumed disposal as, apart from the deduction, would be apportioned to the relevant assets on that further application of this paragraph.

(8) An election under this paragraph with respect to any loss shall be made by the company in question by notice to the inspector given within—

(a) the period of two years beginning with the end of the accounting period of that company in which the disposal is made on which the loss accrues; or

(b) such longer period as the Board may by notice allow.

Textual Amendments

F533 Sch. 7A para. 5(2A) inserted (with effect in accordance with s. 93(11) of the amending Act) by Finance Act 1994 (c. 9), **s. 93(10)** (with Sch. 12)

Restrictions on the deduction of pre-entry losses

6 (1) In the calculation of the amount to be included in respect of chargeable gains in any company's total profits for any accounting period—

(a) if in that period there is any chargeable gain from which the whole or any part of any pre-entry loss accruing in that period is deductible in accordance with paragraph 7 below, the loss or, as the case may be, that part of it shall be deducted from that gain;

(b) if, after all such deductions as may be made under paragraph (a) above have been made, there is in that period any chargeable gain from which the whole or any part of any pre-entry loss carried forward from a previous accounting period is deductible in accordance with paragraph 7 below, the loss or, as the case may be, that part of it shall be deducted from that gain;

(c) the total chargeable gains (if any) remaining after the making of all such deductions as may be made under paragraph (a) or (b) above shall be subject to deductions in accordance with section 8(1) in respect of any allowable losses that are not pre-entry losses; and

(d) any pre-entry loss which has not been the subject of a deduction under paragraph (a) or (b) above (as well as any other losses falling to be carried forward under section 8(1)) shall be carried forward to the following accounting period of that company.

(2) Subject to sub-paragraph (1) above, any question as to which or what part of any pre-entry loss has been deducted from any particular chargeable gain shall be decided—

(a) where it falls to be decided in respect of the setting of losses against gains in any accounting period ending before 16th March 1993 as if—

(i) pre-entry losses accruing in any such period had been set against chargeable gains before any other allowable losses accruing in that period were set against those gains;

(ii) pre-entry losses carried forward to any such period had been set against chargeable gains before any other allowable losses carried forward to that period were set against those gains; and

(iii) subject to sub-paragraphs (i) and (ii) above, the pre-entry losses carried forward to any accounting period ending on or after 16th March 1993 were identified with such losses as may be determined in accordance with such elections as may be made by the company to which they accrued;

and

(b) in any other case, in accordance with such elections as may be made by the company to which the loss accrued;

and any question as to which or what part of any pre-entry loss has been carried forward from one accounting period to another shall be decided accordingly.

(3) An election by any company under this paragraph shall be made by notice to the inspector given—

(a) in the case of an election under sub-paragraph (2)(a)(iii) above, before the end of the period of two years beginning with the end of the accounting period of that company which was current on 16th March 1993; and

(b) in the case of an election under sub-paragraph (2)(b) above, before the end of the period of two years beginning with the end of the accounting period of that company in which the gain in question accrued.

(4) For the purposes of this Schedule where any matter falls to be determined under this paragraph by reference to an election but no election is made, it shall be assumed, so far as consistent with any elections that have been made—

(a) that losses are set against gains in the order in which the losses accrued; and

(b) that the gains against which they are set are also determined according to the order in which they accrued with losses being set against earlier gains before they are set against later ones.

Gains from which pre-entry losses are to be deductible

7 (1) A pre-entry loss that accrued to a company before it became a member of the relevant group shall be deductible from a chargeable gain accruing to that company if the gain is one accruing—

(a) on a disposal made by that company before the date on which it became a member of the relevant group ("the entry date");

(b) on the disposal of an asset which was held by that company immediately before the entry date; or

(c) on the disposal of any asset which—

(i) was acquired by that company on or after the entry date from a person who was not a member of the relevant group at the time of the acquisition; and

(ii) since its acquisition from that person has not been used or held for any purposes other than those of a trade which was being carried on by that company at the time immediately before the entry date and which continued to be carried on by that company until the disposal.

(2) The pre-entry proportion of an allowable loss accruing to any company on the disposal of a pre-entry asset shall be deductible from a chargeable gain accruing to that company if—

(a) the gain is one accruing on a disposal made, before the date on which it became a member of the relevant group, by that company and that company is the one ("the initial company") by reference to which the asset on the disposal of which the loss accrues is a pre-entry asset;

(b) the pre-entry asset and the asset on the disposal of which the gain accrues were each held by the same company at a time immediately before it became a member of the relevant group; or

(c) the gain is one accruing on the disposal of an asset which—

(i) was acquired by the initial company (whether before or after it became a member of the relevant group) from a person who, at the time of the acquisition, was not a member of that group; and

(ii) since its acquisition from that person has not been used or held for any purposes other than those of a trade which was being carried on, immediately before it became a member of the relevant group, by the initial company and which continued to be carried on by the initial company until the disposal.

(3) Where two or more companies become members of the relevant group at the same time and those companies were all members of the same group of companies immediately before they became members of the relevant group, then, without prejudice to paragraph 9 below—

(a) an asset shall be treated for the purposes of sub-paragraph (1)(b) above as held, immediately before it became a member of the relevant group, by the company to which the pre-entry loss in question accrued if that company is one of those companies and the asset was in fact so held by another of those companies;

(b) two or more assets shall be treated for the purposes of sub-paragraph (2)(b) above as assets held by the same company immediately before it became a member of the relevant group wherever they would be so treated if all those companies were treated as a single company; and

(c) the acquisition of an asset shall be treated for the purposes of sub-paragraphs (1)(c) and (2)(c) above as an acquisition by the company to which the pre-entry loss in question accrued if that company is one of those companies and the assset was in fact acquired (whether before or after they became members of the relevant group) by another of those companies.

(4) Paragraph 1(4) above shall apply for determining for the purposes of this paragraph whether an asset on the disposal of which a chargeable gain accrues was held at the time when a company became a member of the relevant group as it applies for determining whether that asset is a pre-entry asset in relation to that group by reference to that company.

(5) Subject to sub-paragraph (6) below, where a gain accrues on the disposal of the whole or any part of—

(a) any asset treated as a single asset but comprising assets only some of which were held at the time mentioned in paragraph (b) of sub-paragraph (1) or (2) above, or

(b) an asset which is treated as held at that time by virtue of a provision requiring an asset which was not held at that time to be treated as the same as an asset which was so held,

a pre-entry loss shall be deductible by virtue of paragraph (b) of sub-paragraph (1) or (2) above from the amount of that gain to the extent only of such proportion of that gain as is attributable to assets held at that time or, as the case may be, represents the gain that would have accrued on the asset so held.

(6) Where—

(a) a chargeable gain accrues by virtue of subsection (10) of section 116 on the disposal of a qualifying corporate bond,

(b) that bond was not held as required by paragraph (b) of sub-paragraph (1) or (2) above at the time mentioned in that paragraph, and

(c) the whole or any part of the asset which is the old asset for the purposes of that section was so held,

the question whether that gain is one accruing on the disposal of an asset the whole or any part of which was held by a particular company at that time shall be determined for the purposes of this paragraph as if the bond were deemed to have been so held to the same extent as the old asset.

Change of a company's nature

8 (1) If—

(a) within any period of three years, a company becomes a member of a group of companies and there is (either earlier or later in that period, or at the same

time) a major change in the nature or conduct of a trade carried on by that company, or

(b) at any time after the scale of the activities in a trade carried on by a company has become small or negligible, and before any considerable revival of the trade, that company becomes a member of a group of companies,

the trade carried on before that change, or which has become small or negligible, shall be disregarded for the purposes of paragraph 7(1)(c) and (2)(c) above in relation to any time before the company became a member of the group in question.

(2) In sub-paragraph (1) above the reference to a major change in the nature or conduct of a trade includes a reference to—

(a) a major change in the type of property dealt in, or services or facilities provided, in the trade; or

(b) a major change in customers, markets or outlets of the trade;

and this paragraph shall apply even if the change is the result of a gradual process which began outside the period of three years mentioned in sub-paragraph (1)(a) above.

(3) Where the operation of this paragraph depends on circumstances or events at a time after the company becomes a member of any group of companies (but not more than three years after), an assessment to give effect to this paragraph shall not be out of time if made within six years from that time or the latest such time.

Modifications etc. (not altering text)

C201 Sch. 7A para. 8(1) applied by 1988 c. 1, Sch. 28A para. 13 (as inserted (with effect in accordance with Sch. 26 para. 5 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 26 para. 3**)

Identification of "the relevant grou"p and application of Schedule to every connected group

9 (1) This paragraph shall apply where there is more than one group of companies which would be the relevant group in relation to any company.

(2) Where any loss has accrued on the disposal by any company of any asset, this Schedule shall not apply by reference to any group of companies in relation to any loss accruing on that disposal unless—

(a) that group is a group in relation to which that loss is a pre-entry loss by virtue of paragraph 1(2)(a) above or, if there is more than one such group, the one of which that company most recently became a member;

(b) that group, in a case where there is no group falling within paragraph (a) above, is either—

(i) the group of which that company is a member at the time of the disposal, or

(ii) if it is not a member of a group of companies at that time, the group of which that company was last a member before that time;

(c) that group, in a case where there is a group falling within paragraph (a) **[**[F534]or (b)**]** above, is a group of which that company was a member at any time in the accounting period of that company in which it became a member of the group falling within that paragraph;

(d) that group is a group the principal company of which is or has been, or has been under the control of—

(i) the company by which the disposal is made, or

(ii) another company which is or has been a member of a group by reference to which this Schedule applies in relation to the loss in question by virtue of paragraph (a), (b) or (c) above;

or

(e) that group is a group of which either—

(i) the principal company of a group by reference to which this Schedule so applies, or

(ii) a company which has had that principal company under its control,

is or has been a member;

and sub-paragraphs (3) to (5) below shall apply in the case of any loss accruing on the disposal of any asset where, by virtue of this sub-paragraph, there are two or more groups ("connected groups") by reference to which this Schedule applies.

(3) This Schedule shall apply separately in relation to each of the connected groups (so far as they are not groups in relation to which the loss is a pre-entry loss by virtue of paragraph 1(2)(a) above) for the purpose of—

(a) determining whether the loss on the disposal of any asset is a loss on the disposal of a pre-entry asset; and

(b) calculating the pre-entry proportion of that loss.

(4) Subject to sub-paragraph (5) below, paragraph 6 above shall have effect—

(a) as if the pre-entry proportion of any loss accruing on the disposal of an asset which is a pre-entry asset in the case of more than one of the connected groups were the largest pre-entry proportion of that loss calculated in accordance with sub-paragraph (3) above; and

(b) so that, where the loss accruing on the disposal of any asset is a pre-entry loss by virtue of paragraph 1(2)(a) above in the case of any of the connected groups, that loss shall be the pre-entry loss for the purposes of paragraph 6 above, and not any amount which is the pre-entry proportion of that loss in relation to any of the other groups.

(5) Where, on the separate application of this Schedule in the case of each of the groups by reference to which this Schedule applies, there is, in the case of the disposal of any asset, a pre-entry loss by reference to each of two or more of the connected groups, no amount in respect of the loss accruing on the disposal shall be deductible under paragraph 7 above from any chargeable gain if any of the connected groups is a group in the case of which, on separate applications of that paragraph in relation to each group, the amount deductible from that gain in respect of that loss is nil.

(6) Notwithstanding that the principal company of one group ("the first group") has become a member of another ("the second group"), those two groups shall not by virtue of section 170(10) be treated **[**[F535]in relation to any company that is or has become a member of the second group ("the relevant company") as the same group for the purposes of this paragraph if—

(a) the time at which the relevant company became a member of the first group is a time in the same accounting period as that in which the principal company of the first group became a member of the second group; or

(b)**]** the principal company of the first group was under the control, immediately before it became a member of the second group, of a company which at that time was already a member of the second group.

(7) Where, in the case of the disposal of any asset—

(a) two or more groups which but for sub-paragraph (6) above would be treated as the same group are treated as separate groups by virtue of that sub-paragraph; and

(b) one of those groups is a group of which either—

(i) the principal company of a group by reference to which this Schedule applies by virtue of sub-paragraph (2)(a), (b) or (c) above in relation to any loss accruing on the disposal, or

(ii) a company which has had that principal company under its control,

is or has been a member,

this paragraph shall have effect as if that principal company had been a member of each of the groups mentioned in paragraph (a) above.

Textual Amendments

F534 Words in Sch. 7A para. 9(2)(c) inserted (with application in accordance with s. 94(4) of the amending Act) by Finance Act 1994 (c. 9), **s. 94(3)**

F535 Words in Sch. 7A para. 9(6) substituted (with effect in accordance with s. 138(2) of the amending Act) by Finance Act 1998 (c. 36), **s. 138(1)**

Appropriations to stock in trade

10 Where, but for an election under subsection (3) of section 161, there would be deemed to have been a disposal at any time by any company of any asset—

(a) the amount by which the market value of the asset may be treated as increased in pursuance of that election shall not include the amount of any pre-entry loss that would have accrued on that disposal; and

(b) this Schedule shall have effect as if the pre-entry loss of the last mentioned amount had accrued to that company at that time.

Continuity provisions

11 (1) This paragraph applies where provision has been made by or under any enactment ("the transfer legislation") for the transfer of property, rights and liabilities to any person from—

(a) a body established by or under any enactment for the purpose, in the exercise of statutory functions, of carrying on any undertaking or industrial or other activity in the public sector or of exercising any other statutory functions;

(b) a subsidiary of such a body; or

(c) a company wholly owned by the Crown.

(2) A loss shall not be a pre-entry loss for the purposes of this Schedule in relation to any company to whom a transfer has been made by or under the transfer legislation if that loss—

(a) accrued to the person from whom the transfer has been made; and

(b) falls to be treated, in accordance with any enactment made in relation to transfers by or under that legislation, as a loss accruing to that company.

(3) For the purposes of this Schedule where a company became a member of the relevant group by virtue of the transfer by or under the transfer legislation of any shares in or other securities of that company or any other company—

(a) a loss that accrued to that company before it so became a member of that group shall not be a pre-entry loss in relation to that group; and

(b) no asset held by that company when it so became a member of that group shall by virtue of that fact be a pre-entry asset.

(4) For the purposes of this paragraph a company shall be regarded as wholly owned by the Crown if it is—

(a) a company limited by shares in which there are no issued shares held otherwise than by, or by a nominee of, the Treasury, a Minister of the Crown, a Northern Ireland department or another company wholly owned by the Crown; or

(b) a company limited by guarantee of which no person other than the Treasury, a Minister of the Crown or a Northern Ireland department, or a nominee of the Treasury, a Minister of the Crown or a Northern Ireland department, is a member.

(5) In this paragraph—

"enactment" includes any provision of any Northern Ireland legislation, within the meaning of section 24 of the [M127]Interpretation Act 1978; and

"statutory functions" means functions under any enactment, under any subordinate legislation, within the meaning of the Interpretation Act 1978, or under any statutory rules, within the meaning of the [M128]Statutory Rules (Northern Ireland) Order 1979.

Marginal Citations

M127 1978 c. 30.

M128 S.I. 1979/1573 (N.I. 13).

Companies changing groups on certain transfers of shares etc.

12 For the purposes of this Schedule, and without prejudice to paragraph 11 above, where—

(a) a company which is a member of a group of companies becomes at any time a member of another group of companies as the result of a disposal of shares in or other securities of that company or any other company; and

(b) that disposal is one on which, by virtue of any enactment specified in section 35(3)(d), neither a gain nor a loss would accrue,

this Schedule shall have effect in relation to the losses that accrued to that company before that time and the assets held by that company at that time as if any time when it was a member of the first group were included in the period during which it is treated as having been a member of the second group.**]**

[F536SCHEDULE 7AA

RESTRICTIONS ON SETTING LOSSES AGAINST PRE-ENTRY GAINS

Textual Amendments

F536 Sch. 7AA inserted (with effect in accordance with s. 137(5) of the amending Act) by Finance Act 1998 (c. 36), s. 137(2), **Sch. 24**

Introductory

1 (1) This Schedule applies in the case of any company ("the relevant company") in relation to any accounting period ("the gain period") in which a pre-entry gain has accrued to that company.

(2) Subject to sub-paragraph (3) below, references in this Schedule to a pre-entry gain are references to any chargeable gain accruing to a company in an accounting period in which that company joins a group of companies after the gain has accrued to it.

(3) References in this Schedule to a company joining a group of companies—

(a) are references to its becoming a member of any group of companies of which it was not a member immediately before becoming a member; but

(b) do not include references to a company becoming a member of a group of companies at any time before 17th March 1998.

(4) Nothing in section 170(10) shall prevent all the companies of one group from being treated for the purposes of this Schedule as joining another group of companies when the principal company of the first group becomes a member of the other group.

Restriction on setting off losses

2 (1) Notwithstanding anything in section 8 or Schedule 7A, the amount to be included in respect of chargeable gains in the relevant company's total profits for the gain period shall be computed by adding together—

(a) the adjusted amounts of the pre-entry gains accruing to the relevant company in the gain period; and

(b) the amount which, in accordance with that section and (where applicable) that Schedule, would fall to be included in respect of chargeable gains in those profits if the amounts specified in sub-paragraph (2) below were disregarded.

(2) The amounts to be disregarded as mentioned in sub-paragraph (1)(b) above are—

(a) all the pre-entry gains accruing to the relevant company in the gain period; and

(b) so much of any amount falling within subsection (1)(a) or (b) of section 8 as is applied in accordance with paragraph 3 below in reducing the amount of any such pre-entry gain;

and, accordingly, amounts which are applied in accordance with paragraph 3 below in reducing the amount of any pre-entry gain accruing in the gain period shall not be available to be carried forward for the purposes of section 8(1)(b) or paragraph 6 of Schedule 7A to any subsequent accounting period.

Adjustment of pre-entry gains

3 (1) For the purposes of paragraph 2 above the adjusted amount of any pre-entry gain accruing to the relevant company in the gain period is the amount of that gain after any amount that may be set against it under this paragraph has been applied in reducing it.

(2) Subject to sub-paragraphs (3) and (4) below, the whole or any part of any amount which under paragraph 4 below is a qualifying loss in relation to a pre-entry gain may be set against that gain, except so far as it has been set against another pre-entry gain.

(3) Nothing in this Schedule shall authorise the reduction of a pre-entry gain by the deduction of the whole or any part of any amount to which paragraph 7 of Schedule 7A applies (pre-entry losses) unless that gain is a gain from which that amount is deductible in accordance with that paragraph.

(4) Nothing in this Schedule shall authorise the reduction of a pre-entry gain by the deduction of any amount which section 18(3) prevents from being deductible from that gain.

Meaning of "qualifying losse"s

4 (1) Any amount which, in the case of the relevant company, would fall within section 8(1)(b) for the gain period is a qualifying loss in relation to any pre-entry gain accruing to the relevant company in that period.

(2) Any allowable loss accruing to the relevant company in the gain period is a qualifying loss in relation to a pre-entry gain accruing to that company in that period if—

(a) the time when the loss accrued is the same as or before the time when the gain accrued; or

(b) the loss having accrued after the time when the gain accrued, there is no time falling within sub-paragraph (3) below between—

(i) the time when the gain accrued; and

(ii) the time immediately after the time when the loss accrued.

(3) A time falls within this sub-paragraph, in relation to any allowable loss, if—

(a) it is a time at which the relevant company joined a group of companies; and

(b) the relevant asset was not in relevant ownership immediately before that time.

(4) For the purposes of sub-paragraph (3) above the relevant asset was in relevant ownership at the time immediately before the relevant company joined a group of companies if, and only if, it was at that time held by the relevant company or by another company which—

(a) joined that group of companies ("the new group") at the same time as the relevant company; and

(b) had been a member of the same group of companies as the relevant company immediately before joining the new group.

(5) In this paragraph "relevant asset", in relation to an allowable loss, means the asset on the disposal of which that loss accrued.

Special rule for disposal of pooled assets

5 (1) This paragraph applies where—

(a) any holding of securities falls by virtue of any provision of Chapter I of Part IV to be treated as a single asset;

(b) one or more disposals of securities comprised in that holding is made by the relevant company in the gain period at or after the relevant entry time for that company; and

(c) an allowable loss accrues to the relevant company on that disposal or, as the case may be, on one or more of them.

(2) The extent to which any allowable loss falling within sub-paragraph (1)(c) above is to be treated for the purposes of paragraph 4(4) above as a loss accruing on the disposal of an asset held at any entry time for the relevant company shall be determined—

(a) by computing the notional net pre-entry loss accruing to the relevant company in the gain period;

(b) by setting allowable losses falling within sub-paragraph (1)(c) above against that notional net pre-entry loss in the order in which those losses accrued; and

(c) by treating the allowable loss as accruing on the disposal of an asset held at the entry time to the extent only that there is or remains an amount against which it can be set under paragraph (b) above.

(3) For the purposes of this paragraph the notional net pre-entry loss accruing to the relevant company in the gain period shall be determined—

(a) by computing all the chargeable gains and allowable losses that, on the relevant assumptions, would have accrued to the relevant company on the disposals falling within sub-paragraph (4) below;

(b) in a case where the aggregate amount of those gains is equal to or exceeds the aggregate amount of those losses, taking nil as the amount of the notional net pre-entry loss; and

(c) in any other case, taking the amount by which the aggregate of those losses exceeds the aggregate of those gains as the amount of the notional net pre-entry loss.

(4) A disposal falls within this sub-paragraph to the extent that—

(a) it is made by the relevant company in the gain period at or after the relevant entry time for that company; and

(b) on the relevant assumptions, it would be taken to be a disposal of securities that are pre-entry securities in relation to the relevant entry time for that company.

(5) For the purposes of this paragraph the relevant assumptions, in relation to any company, are—

(a) that securities which are pre-entry securities in relation to the relevant entry time for that company are not to be regarded as part of a single asset with any securities which are post-entry securities in relation to that time;

(b) that securities disposed of in the gain period at or after that time are identified with securities that are pre-entry securities in relation to that time, rather than with securities which are post-entry securities in relation to that time; and

(c) subject to paragraphs (a) and (b) above, that securities disposed of in the gain period are identified in accordance with the provisions applicable apart from paragraphs (a) and (b) above.

(6) For the purpose of applying the relevant assumptions in relation to any disposal of securities by the relevant company, it shall be further assumed—

(a) that the relevant assumptions applied to every previous disposal in the gain period of securities by one company to another company in the same group of companies;

(b) that (subject to paragraph (c) below) securities disposed of by one member of a group of companies to another member of that group retain the same status (as pre-entry securities or as post-entry securities) in relation to a particular time as they had before the disposal; and

(c) that securities acquired by the relevant company at or after the relevant entry time for that company are to be taken to be pre-entry securities in relation to that time only if they fall within sub-paragraph (7) below.

(7) Securities fall within this sub-paragraph if, on the relevant assumptions and the assumptions set out in sub-paragraph (6)(a) and (b) above, they fall to be identified with securities which—

(a) were held by the relevant company or any associated company of the relevant company at the time which is the relevant entry time for the relevant company; and

(b) have not, between that time and the time when they are disposed of by the relevant company, been disposed of otherwise than by a disposal made by one company in a group of companies to another company in the same group.

(8) Where anything is treated by virtue of section 127 as the same asset as any securities comprised in any holding of securities falling to be regarded as a single asset by virtue of any provision of Chapter I of Part IV, so much of that section as determines the time at which anything comprised in the asset is taken to have been acquired shall be disregarded in determining for the purposes of this paragraph whether securities comprised in the asset are pre-entry securities or post-entry securities.

(9) Subject to sub-paragraphs (6) to (8) above, in this paragraph—

"associated company" means a company which—

(a) at the time which is the relevant entry time in the case of the relevant company joined the group of companies that was also joined at that time by the relevant company; and

(b) had been a member of the same group of companies as the relevant company immediately before that time;

"entry time", in relation to a company, means any time in the gain period at which the company joins a group of companies;

"pre-entry securities", in relation to an entry time, means such securities acquired by the company in question before that time as have not already been disposed of before that time;

"post-entry securities", in relation to an entry time, means securities acquired by the company in question at or after that time;

"the relevant entry time" in relation to any company means—

(a) if there is only one entry time for that company, that time; and

(b) if there is more than one such time, the earlier or earliest such time.

"securities" has the meaning given for the purposes of section 104 by subsection (3) of that section.

Special rule for losses on disposal of certain assets acquired at different times

6 (1) This paragraph applies in relation to any allowable loss accruing to the relevant company in the gain period on the disposal of the whole or any part of an asset if—

(a) the asset is one falling within sub-paragraph (2) below;

(b) the disposal is one made at or at any time after an entry time; and

(c) the loss is not one in relation to which paragraph 5(2) above applies.

(2) An asset falls within this sub-paragraph if it is—

(a) an asset treated as a single asset but comprising assets only some of which were held immediately before the entry time by the relevant company or by an associated company; or

(b) an asset which is treated as held immediately before the entry time by the relevant company or by an associated company by virtue of a provision requiring an asset which was not held immediately before that time to be treated as the same as an asset which was so held.

(3) Only such proportions of the loss as fall within sub-paragraph (4) below shall be taken for the purposes of paragraph 4(4) above to have accrued on the disposal of an asset held at the entry time.

(4) Those proportions are—

(a) the proportion of the loss which, on a just and reasonable apportionment, is properly attributable to assets in fact held at the entry time; and

(b) such proportion of the loss not falling within paragraph (a) above as represents the loss that would have accrued if the asset disposed of had been the asset in fact held at that time.

(5) In this paragraph—

"associated company", in relation to any entry time, means a company which—

(a) at that time joined the group of companies that was also joined at that time by the relevant company; and

(b) had been a member of the same group of companies as the relevant company immediately before that time;

"entry time" means any time in the gain period at which the relevant company joins a group of companies.

Special rule for gains and losses on deemed annual disposal

7 Where—

(a) a chargeable gain or allowable loss is treated as accruing at the end of a company's accounting period by virtue of section 213(1)(c) or 214A(2)(b), and

(b) that accounting period is one in which that company has joined a group of companies,

this Schedule shall have effect as if the gain or loss had accrued before the time or, as the case may be, the earliest time at which the company joined a group of companies in that period.**]**

[F537 SCHEDULE 7B

Section 214B.

MODIFICATION OF ACT IN RELATION TO OVERSEAS LIFE INSURANCE COMPANIES

Textual Amendments

F537 Sch. 7B inserted (27.7.1993) by 1993 c. 34, s. 102(2), **Sch.11**

1 In its application to an overseas life insurance company (as defined in section 431(2) of the Taxes Act) this Act shall have effect with the following modifications; and in those modifications any reference to the Taxes Act is a reference to that Act as it has effect in relation to such a company by virtue of Schedule 19AC to that Act.

2 (1) In section 13(5)(d), the words "section 11(2)(b), (c), (d) or (e) of the Taxes Act"shall be treated as substituted for the words "section 10(3)".

(2) This paragraph shall apply in relation to chargeable gains accruing to companies in accounting periods beginning after 31st December 1992.

3 (1) In section 16(3), the words "under section 11(2)(b), (c), (d) or (e) of the Taxes Act" shall be treated as substituted for the words "under section 10".

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

4 (1) In section 25, the following subsection shall be treated as substituted for subsection (7)—

"(7) For the purposes of this section an asset is at any time a chargeable asset in relation to an overseas life insurance company if, were it to be disposed of at that time, any chargeable gains accruing to the company on the disposal would form part of its chargeable profits for corporation tax purposes by virtue of section 11(2)(b), (c), (d) or (e) of the Taxes Act."

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

5 (1) In section 140A(2), the words " section 11(2)(b), (c) or (d) of the Taxes Act " shall be treated as substituted for the words "section 10(3)".

(2) This paragraph shall apply in relation to transfers taking place in accounting periods of company B beginning after 31st December 1992.

6 (1) In section 159(4)(b), the words " section 11(2)(b), (c) or (d) of the Taxes Act " shall be treated as substituted for the words "section 10(3)".

(2) This paragraph shall apply in relation to disposals or acquisitions made in accounting periods beginning after 31st December 1992.

7 (1) In section 172(4), the words " section 11(2)(b), (c), (d) or (e) of the Taxes Act " shall be treated as substituted for the words "section 10(3)".

(2) This paragraph shall apply in relation to disposals made or assumed to have been made in accounting periods beginning after 31st December 1992.

8 (1) In subsections (2)(a) and (3) of section 185, the words " or (4A) "shall be treated as inserted after the words "subsection (4)".

(2) The following subsections shall be treated as inserted after subsection (4) of that section —

"(4A) Subject to subsection (4B) below, if at any time after the relevant time the company is an overseas life insurance company —

(a) any assets of its long term business fund which, immediately after the relevant time —

(i) are situated outside the United Kingdom and are used or held for the purposes of the branch or agency in the United Kingdom through which the company carries on life assurance business; or

(ii) are attributed to the branch or agency by virtue of section 11B of the Taxes Act,

shall be excepted from subsection (2) above; and

(b) any new assets of its long term business fund which, after that time —

(i) are so situated and are so used or held; or

(ii) are so attributed,

shall be excepted from subsection (3) above.

(4B) Subsection (4A) above shall not apply if the relevant time falls before the relevant day; and for the purposes of this subsection the relevant day is the first day of the company's first accounting period to begin after 31st December 1992."

(3) In subsection (5) of that section, the following paragraph shall be treated as inserted after paragraph (b) —

"(ba) "life assurance business" and "long term business fund" have the meanings given by section 431(2) of the Taxes Act;"

9 (1) In section 191(1)(b), the words " section 11(2)(b), (c), (d) or (e) of the Taxes Act "shall be treated as substituted for the words "section 10(3)".

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

[F538 9A In section 211(1), the reference to a transfer of the whole or part of a company's long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the Insurance Companies Act 1982 shall be treated as including a reference to any qualifying overseas transfer (within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act).**]**

Textual Amendments

F538 Sch. 7B para. 9A inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 6(2)**

10 (1) In section 212, the following subsection shall be treated as inserted after subsection (5)—

"(5A) In its application to an overseas life insurance company this section shall have effect as if the references in subsections (1) and (2) to assets were to such of the assets concerned as are —

(a) section 11(2)(b) assets;

(b) section 11(2)(c) assets; or

(c) assets which by virtue of section 11B of the Taxes Act are attributed to the branch or agency in the United Kingdom through which the company carries on life assurance business;

and any expression used in this subsection to which a meaning is given by section 11A of the Taxes Act has that meaning."

(2) This paragraph shall apply in relation to accounting periods beginning after 31st December 1992.

11 (1) In section 213(4), the words " in the United Kingdom through a branch or agency "shall be treated as inserted after the words "long term business".

[F539 (1A) In section 213(5), the reference to a transfer of the whole or part of a company's long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the Insurance Companies Act 1982 shall be treated as including a reference to any qualifying overseas transfer (within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act).**]**

(2) This paragraph shall apply in relation to events occurring in accounting periods beginning after 31st December 1992.

Textual Amendments

F539 Sch. 7B para. 11(1A) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 6(3)**

12 (1) In section 214, the following subsection shall be treated as inserted after subsection (11)—

"(12) In its application to an overseas life insurance company this section shall have effect as if —

(a) the references in subsections (1), (2) and (6) to (10) to assets were to such of the assets concerned as are —

(i) section 11(2)(b) assets; or

(ii) section 11(2)(c) assets;

(b) the references in subsections (1), (7) and (8) to liabilities were to such of the liabilities concerned as are attributable to the branch or agency in the United Kingdom through which the company carries on life assurance business;

[F540 (c) the reference in subsection (11) to a transfer of the whole or part of a company's long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the Insurance Companies Act 1982 were to be treated as including a reference to any qualifying overseas transfer (within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act), and the references in that subsection to the business to which the transfer relates were to be construed accordingly;**]**

and any expression used in this subsection to which a meaning is given by section 11A of the Taxes Act has that meaning."

(2) This paragraph shall apply where the accounting period mentioned in section 214(6)(d) begins after 31st December 1992.

Textual Amendments

F540 Words in Sch. 7B para. 12(1) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 6(4)**

13 (1) In subsection (4) of section 214A, in item G the words " in the United Kingdom through a branch or agency "shall be treated as inserted after the words "cessation of the carrying on".

(2) In subsection (6) of that section, the words " in the United Kingdom through a branch or agency "shall be treated as inserted after the words "long term business".

[F541(2A) In subsection (7) of that section, the reference to a transfer of the whole or part of a company's long term business in accordance with a scheme sanctioned by a court under Part I of Schedule 2C to the Insurance Companies Act 1982 shall be treated as including a reference to any qualifying overseas transfer (within the meaning of paragraph 4A of Schedule 19AC to the Taxes Act); and the references in that subsection and in subsection (8) of that section to the business to which the transfer relates shall be construed accordingly.**]**

(3) In subsection (11) of that section, the following words shall be treated as inserted at the end " ; and, as it applies for the purposes of this section, the words "(with the modifications set out in subsection (12) of that section)" shall be treated as inserted after the words "section 214." .

Textual Amendments

F541 Sch. 7B para. 13(2A) inserted (with effect in accordance with s. 53(2) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 9 para. 6(5)**

14 (1) In section 228(6)(b), the words " section 11(2)(b), (c) or (d) of the Taxes Act "shall be treated as substituted for the words "section 10(3)".

(2) This paragraph shall apply in relation to acquisitions made in chargeable periods beginning after 31st December 1992.**]**

SCHEDULE 8

Section 240.

LEASES

Modifications etc. (not altering text)

C202 Sch. 8 modified (with effect in accordance with s. 39(4)(a)(5) of the amending Act) by Finance Act 1995 (c. 4), s. 39(3), **Sch. 6 para. 37**

Leases of land as wasting assets: curved line restriction of allowable expenditure

1 (1) A lease of land shall not be a wasting asset until the time when its duration does not exceed 50 years.

(2) If at the beginning of the period of ownership of a lease of land it is subject to a sublease not at a rackrent and the value of the lease at the end of the duration of the sublease, estimated as at the beginning of the period of ownership, exceeds the expenditure allowable under section 38(1)(a) in computing the gain accruing on a disposal of the lease, the lease shall not be a wasting asset until the end of the duration of the sublease.

(3) In the case of a wasting asset which is a lease of land the rate at which expenditure is assumed to be written off shall, instead of being a uniform rate as provided by section 46, be a rate fixed in accordance with the Table below.

(4) Accordingly, for the purposes of the computation of the gain accruing on a disposal of a lease, and given that —

(a) the percentage derived from the Table for the duration of the lease at the beginning of the period of ownership is P(1),

(b) the percentage so derived for the duration of the lease at the time when any item of expenditure attributable to the lease under section 38(1)(b) is first reflected in the nature of the lease is P(2), and

(c) the percentage so derived for the duration of the lease at the time of the disposal is P(3), then—

(i) there shall be excluded from the expenditure attributable to the lease under section 38(1)(a) a fraction equal to —

$$\frac{P(1) - P(3)}{P(1)},$$

and

(ii) there shall be excluded from any item of expenditure attributable to the lease under section 38(1)(b) a fraction equal to—

$$\frac{P(2) - P(3)}{P(2)}.$$

(5) This paragraph applies notwithstanding that the period of ownership of the lease is a period exceeding 50 years and, accordingly, no expenditure shall be written off under this paragraph in respect of any period earlier than the time when the lease becomes a wasting asset.

(6) Section 47 shall apply in relation to this paragraph as it applies in relation to section 46.

If the duration of the lease is not an exact number of years the percentage to be derived from the Table above shall be the percentage for the whole number of years

plus one-twelfth of the difference between that and the percentage for the next higher number of years for each odd month counting an odd 14 days or more as one month.

TABLE

Years	*Percentage*
50 (or more)	100
49	99.657
48	99.289
47	98.902
46	98.490
45	98.059
44	97.595
43	97.107
42	96.593
41	96.041
40	95.457
39	94.842
38	94.189
37	93.497
36	92.761
35	91.981
34	91.156
33	90.280
32	89.354
31	88.371
30	87.330
29	86.226
28	85.053
27	83.816
26	82.496
25	81.100
24	79.622
23	78.055
22	76.399
21	74.635

20	72.770
19	70.791
18	68.697
17	66.470
16	64.116
15	61.617
14	58.971
13	56.167
12	53.191
11	50.038
10	46.695
9	43.154
8	39.399
7	35.414
6	31.195
5	26.722
4	21.983
3	16.959
2	11.629
1	5.983
0	0

Premiums for leases

2 (1) Subject to this Schedule where the payment of a premium is required under a lease of land, or otherwise under the terms subject to which a lease of land is granted, there is a part disposal of the freehold or other asset out of which the lease is granted.

(2) In applying section 42 to such a part disposal, the property which remains undisposed of includes a right to any rent or other payments, other than a premium, payable under the lease, and that right shall be valued as at the time of the part disposal.

3 (1) This paragraph applies in relation to a lease of land.

(2) Where under the terms subject to which a lease is granted, a sum becomes payable by the tenant in lieu of the whole or part of the rent for any period, or as consideration for the surrender of the lease, the lease shall be deemed for the purposes of this Schedule to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum**[**[F542], being a premium which—

(a) is due when the sum is payable by the tenant; and

(b) where the sum is payable in lieu of rent, is in respect of the period in relation to which the sum is payable.**]**

(3) Where, as consideration for the variation or waiver of any of the terms of a lease, a sum becomes payable by the tenant otherwise than by way of rent, the lease shall be deemed for the purposes of this Schedule to have required the payment of a premium to the landlord (in addition to any other premium) of the amount of that sum**[**F543, being a premium which—

(a) is due when the sum is payable by the tenant; and

(b) is in respect of the period from the time when the variation or waiver takes effect to the time when it ceases to have effect.**]**

[F544(4) Where under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, that shall not be the occasion of any recomputation of the gain accruing on the receipt of any other premium, and the premium shall be regarded—

(a) in the case of a premium deemed to have been received for the surrender of a lease, as consideration for a separate transaction which is effected when the premium is deemed to be due and consists of the disposal by the landlord of his interest in the lease; and

(b) in any other case, as consideration for a separate transaction which is effected when the premium is deemed to be due and consists of a further part disposal of the freehold or other asset out of which the lease is granted.

(5) If under sub-paragraph (2) or (3) above a premium is deemed to have been received by the landlord, otherwise than as consideration for the surrender of the lease, and the landlord is a tenant under a lease the duration of which does not exceed 50 years, this Schedule shall apply—

(a) as if an amount equal to the amount of that premium deemed to have been received had been given by way of consideration for the grant of the part of the sublease covered by the period in respect of which the premium is deemed to have been paid; and

(b) as if that consideration were expenditure incurred by the sublessee and attributable to that part of the sublease under section 38(1)(b).**]**

(7) Sub-paragraph (3) above shall apply in relation to a transaction not at arm's length, and in particular in relation to a transaction entered into gratuitously, as if such sum had become payable by the tenant otherwise than by way of rent as might have been required of him if the transaction had been at arm's length.

Textual Amendments

F542 Words in Sch. 8 para. 3(2) substituted (with effect in accordance with s. 142(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 142(2)**

F543 Words in Sch. 8 para. 3(3) substituted (with effect in accordance with s. 142(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 142(3)**

F544 Sch. 8 para. 3(4)(5) substituted for Sch. 8 para. 3(4)-(6) (with effect in accordance with s. 142(5) of the amending Act) by Finance Act 1996 (c. 8), **s. 142(4)**

Subleases out of short leases

4 (1) In the computation of the gain accruing on the part disposal of a lease which is a wasting asset by way of the grant of a sublease for a premium the expenditure

attributable to the lease under paragraphs (a) and (b) of section 38(1) shall be apportioned in accordance with this paragraph, and section 42 shall not apply.

(2) Out of each item of the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) there shall be apportioned to what is disposed of —

(a) if the amount of the premium is not less than what would be obtainable by way of premium for the said sublease if the rent payable under that sublease were the same as the rent payable under the lease, the fraction which, under paragraph 1(3) of this Schedule, is to be written off over the period which is the duration of the sublease, and

(b) if the amount of the premium is less than the said amount so obtainable, the said fraction multiplied by a fraction equal to the amount of the said premium divided by the said amount so obtainable.

(3) If the sublease is a sublease of part only of the land comprised in the lease this paragraph shall apply only in relation to a proportion of the expenditure attributable to the lease under paragraphs (a) and (b) of section 38(1) which is the same as the proportion which the value of the land comprised in the sublease bears to the value of that and the other land comprised in the lease; and the remainder of that expenditure shall be apportioned to what remains undisposed of.

Exclusion of premiums taxed under Schedule A etc.

5 (1) Where by reference to any premium **[**F545any amount is brought into account by virtue of section 34 of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act)**]**, that amount out of the premium shall be excluded from the consideration brought into account in the computation of the gain accruing on the disposal for which the premium is consideration except where the consideration is taken into account in the denominator of the fraction by reference to which an apportionment is made under section 42.

(2) Where by reference to any premium in respect of a sublease granted out of a lease the duration of which (that is of the lease) does not, at the time of granting the lease, exceed 50 years, **[**F545any amount is brought into account by virtue of section 34 of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act)**]** that amount shall be deducted from any gain accruing on the disposal for which the premium is consideration as computed in accordance with the provisions of this Act apart from this sub-paragraph, but not so as to convert the gain into a loss, or to increase any loss.

(3) Subject to subsection (4) below, where **[**F546any amount is brought into account by virtue of section 36 of the Taxes Act (sale of land with right of re-conveyance) as a receipt of a Schedule A business (within the meaning of that Act)**]** a sum of that amount shall be excluded from the consideration brought into account in the computation of the gain accruing on the disposal of the estate or interest in respect of which income tax becomes so chargeable, except where the consideration is taken into account in the denominator of the fraction by reference to which an apportionment is made under section 42.

(4) If what is disposed of is the remainder of a lease or a sublease out of a lease the duration of which does not exceed 50 years, sub-paragraph (3) shall not apply but the amount there referred to shall be deducted from any gain accruing on the disposal as computed in accordance with the provisions of this Act apart from this sub-paragraph

and sub-paragraph (3), but not so as to convert the gain into a loss, or to increase any loss.

(5) References in sub-paragraphs (1) and (2) above to a premium include references to a premium deemed to have been received under subsection (4) or (5) of section 34 of the Taxes Act (which correspond to paragraph 3(2) and (3) of this Schedule).

(6) Section 37 shall not be taken as authorising the exclusion of any amount from the consideration for a disposal of assets taken into account in the computation of the gain by reference to any amount chargeable to tax under section 348 or 349 of the Taxes Act.

Textual Amendments

F545 Words in Sch. 8 para. 5(1)(2) substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 63(2)(a)** (with Sch. 5 para. 73)

F546 Words in Sch. 8 para. 5(3) substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 63(2)(b)** (with Sch. 5 para. 73)

6 (1) If under section 37(4) of the Taxes Act (allowance where, by the grant of a sublease, a lessee has converted a capital amount into a right to income) a person is to be treated as paying additional rent in consequence of having granted a sublease, the amount of any loss accruing to him on the disposal by way of the grant of the sublease shall be reduced by the total amount of rent which he is thereby treated as paying over the term of the sublease (and without regard to whether relief is thereby effectively given over the term of the sublease), but not so as to convert the loss into a gain, or to increase any gain.

(2) Nothing in section 37 of this Act shall be taken as applying in relation to any amount **[**F547brought into account by virtue of section 35 of the Taxes Act (charge on assignment of a lease granted at an undervalue) as a receipt of a Schedule A business (within the meaning of that Act)**]**.

(3) If any adjustment is made under section 36(2)(b) of the Taxes Act on a claim under that paragraph, any necessary adjustment shall be made to give effect to the consequences of the claim on the operation of this paragraph or paragraph 5 above.

Textual Amendments

F547 Words in Sch. 8 para. 6(2) substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 63(3)** (with Sch. 5 para. 73)

7 If under section 34(2) and (3) of the Taxes Act **[**F548any amount is brought into account by virtue of section 34(2) and (3) of the Taxes Act as a receipt of a Schedule A business (within the meaning of that Act) which is or is treated as carried on by any person, that person**]** shall be treated for the purposes of the computation of any gain accruing to him as having incurred at the time the lease was granted expenditure of that amount (in addition to any other expenditure) attributable to the asset under section 38(1)(b).

Textual Amendments

F548 Words in Sch. 8 para. 7 substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 63(4)** (with Sch. 5 para. 73)

[F549 7A References in paragraphs 5 to 7 above to an amount brought into account as a receipt of a Schedule A business include references to an amount brought into account as a receipt of an overseas property business.**]**

Textual Amendments

F549 Sch. 8 para. 7A substituted (with effect in accordance with s. 38 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 5 para. 63(5)** (with Sch. 5 para. 73)

Duration of leases

8 (1) In ascertaining for the purposes of this Act the duration of a lease of land the following provisions shall have effect.

(2) Where the terms of the lease include provision for the determination of the lease by notice given by the landlord, the lease shall not be treated as granted for a term longer than one ending at the earliest date on which it could be determined by notice given by the landlord.

(3) Where any of the terms of the lease (whether relating to forfeiture or to any other matter) or any other circumstances render it unlikely that the lease will continue beyond a date falling before the expiration of the term of the lease, the lease shall not be treated as having been granted for a term longer than one ending on that date.

(4) Sub-paragraph (3) applies in particular where the lease provides for the rent to go up after a given date, or for the tenant"s obligations to become in any other respect more onerous after a given date, but includes provision for the determination of the lease on that date, by notice given by the tenant, and those provisions render it unlikely that the lease will continue beyond that date.

(5) Where the terms of the lease include provision for the extension of the lease beyond a given date by notice given by the tenant this paragraph shall apply as if the term of the lease extended for as long as it could be extended by the tenant, but subject to any right of the landlord by notice to determine the lease.

(6) It is hereby declared that the question what is the duration of a lease is to be decided, in relation to the grant or any disposal of the lease, by reference to the facts which were known or ascertainable at the time when the lease was acquired or created.

Leases of property other than land

9 (1) Paragraphs 2, 3, 4 and 8 of this Schedule shall apply in relation to leases of property other than land as they apply to leases of land, but subject to any necessary modifications.

(2) Where by reference to any capital sum within the meaning of section 785 of the Taxes Act (leases of assets other than land) any person has been charged to income tax on any amount, that amount out of the capital sum shall be deducted from any gain

accruing on the disposal for which that capital sum is consideration, as computed in accordance with the provisions of this Act apart from this sub-paragraph, but not so as to convert the gain into a loss, or increase any loss.

(3) In the case of a lease of a wasting asset which is movable property the lease shall be assumed to terminate not later than the end of the life of the wasting asset.

Interpretation

10 (1) In this Act, unless the context otherwise requires "lease" —

(a) in relation to land, includes an underlease, sublease or any tenancy or licence, and any agreement for a lease, underlease, sublease or tenancy or licence and, in the case of land outside the United Kingdom, any interest corresponding to a lease as so defined,

(b) in relation to any description of property other than land, means any kind of agreement or arrangement under which payments are made for the use of, or otherwise in respect of, property,

and "lessor", "lessee" and "rent" shall be construed accordingly.

(2) In this Schedule "premium" includes any like sum, whether payable to the intermediate or a superior landlord, and for the purposes of this Schedule any sum (other than rent) paid on or in connection with the granting of a tenancy shall be presumed to have been paid by way of premium except in so far as **[**F550other sufficient consideration for the payment can be shown to have been given**]**.

(3) In the application of this Schedule to Scotland "premium" includes in particular a grassum payable to any landlord or intermediate landlord on the creation of a sublease.

Textual Amendments

F550 Words in Sch. 8 para. 10(2) substituted (with effect in accordance with s. 134(2) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 20 para. 67**

SCHEDULE 9

Section 288.

GILT-EDGED SECURITIES

PART I

GENERAL

1 For the purposes of this Act "gilt-edged securities" means the securities specified in Part II of this Schedule, and such stocks and bonds issued under section 12 of the National Loans Act 1968, denominated in sterling and issued after 15th April 1969, as may be specified by order made by the Treasury.

[F551 1A (1) Any security which is a strip of a security which is a gilt-edged security for the purposes of this Act is also itself a gilt-edged security for those purposes.

(2) In this paragraph "strip" has the same meaning as in section 47 of the Finance Act 1942.**]**

Textual Amendments

F551 Sch. 9 para. 1A inserted (29.4.1996) by Finance Act 1996 (c. 8), **Sch. 40 para. 8**

2 The Treasury shall cause particulars of any order made under paragraph 1 above to be published in the London and Edinburgh Gazettes as soon as may be after the order is made.

3 Section 14(b) of the Interpretation Act 1978 (implied power to amend orders made by statutory instrument) shall not apply to the power of making orders under paragraph 1 above.

PART II

EXISTING GILT-EDGED SECURITIES

STOCKS AND BONDS CHARGED ON THE NATIONAL LOANS FUND

12¾%	Treasury Loan 1992
8%	Treasury Loan 1992
10%	Treasury Stock 1992
3%	Treasury Stock 1992
12¼%	Exchequer Stock 1992
13½%	Exchequer Stock 1992
10½%	Treasury Convertible Stock 1992
2%	Index-linked Treasury Stock 1992
12½%	Treasury Loan 1993
6%	Funding Loan 1993
13¾%	Treasury Loan 1993
10%	Treasury Loan 1993
8¼%	Treasury Stock 1993
14½%	Treasury Loan 1994
12½%	Exchequer Stock 1994
9%	Treasury Loan 1994
10%	Treasury Loan 1994
13½%	Exchequer Stock 1994
8½%	Treasury Stock 1994
8½%	Treasury Stock 1994 "A"

2%	Index-linked Treasury Stock 1994
3%	Exchequer Gas Stock 1990-95
12%	Treasury Stock 1995
10¼%	Exchequer Stock 1995
12¾%	Treasury Loan 1995
9%	Treasury Loan 1992-96
15¼%	Treasury Loan 1996
13¼%	Exchequer Loan 1996
14%	Treasury Stock 1996
2%	Index-linked Treasury Stock 1996
10%	Conversion Stock 1996
13¼%	Treasury Loan 1997
10½%	Exchequer Stock 1997
8¾%	Treasury Loan 1997
8¾%	Treasury Loan 1997 "B"
8¾%	Treasury Loan 1997 "C"
15%	Exchequer Stock 1997
6¾%	Treasury Loan 1995-98
15½%	Treasury Loan 1998
12%	Exchequer Stock 1998
12%	Exchequer Stock 1998 "A"
9¾%	Exchequer Stock 1998
9¾%	Exchequer Stock 1998 "A"
9½%	Treasury Loan 1999
10½%	Treasury Stock 1999
12½%	Exchequer Stock 1999
12½%	Exchequer Stock 1999 "A"
12½%	Exchequer Stock 1999 "B"
2½%	Index-linked Treasury Convertible Stock 1999
10½%	Conversion Stock 1999
9%	Conversion Stock 2000
9%	Conversion Stock 2000 "A"
13%	Treasury Stock 2000
8½%	Treasury Loan 2000

14%	Treasury Stock 1998-2001
2½%	Index-linked Treasury Stock 2001
9¾%	Conversion Stock 2001
10%	Treasury Stock 2001
9½%	Conversion Loan 2001
12%	Exchequer Stock 1999-2002
12%	Exchequer Stock 1999-2002 "A"
9½%	Conversion Stock 2002
10%	Conversion Stock 2002
9%	Exchequer Stock 2002
9¾%	Treasury Stock 2002
13¾%	Treasury Stock 2000-2003
13¾%	Treasury Stock 2000-2003 "A"
2½%	Indexed-linked Treasury Stock 2003
9¾%	Conversion Loan 2003
10%	Treasury Stock 2003
3½%	Funding Stock 1999-2004
11½%	Treasury Stock 2001-2004
9½%	Conversion Stock 2004
10%	Treasury Stock 2004
12½%	Treasury Stock 2003-2005
12½%	Treasury Stock 2003-2005 "A"
10½%	Exchequer Stock 2005
9½%	Conversion Stock 2005
9½%	Conversion Stock 2005 "A"
8%	Treasury Loan 2002-2006
8%	Treasury Loan 2002-2006 "A"
2%	Indexed-linked Treasury Stock 2006
9¾%	Conversion Stock 2006
11¾%	Treasury Stock 2003-2007
11¾%	Treasury Stock 2003-2007 "A"
8½%	Treasury Loan 2007
13½%	Treasury Stock 2004-2008
9%	Treasury Loan 2008
9%	Treasury Loan 2008 "A"

2½%	Indexed-linked Treasury Stock 2009
8%	Treasury Stock 2009
2½%	Indexed-linked Treasury Stock 2011
9%	Conversion Loan 2011
5½%	Treasury Stock 2008-2012
2½%	Indexed-linked Treasury Stock 2013
7¾%	Treasury Loan 2012-2015
2½%	Treasury Stock 1986-2016
2½%	Indexed-linked Treasury Stock 2016
2½%	Indexed-linked Treasury Stock 2016 "A"
12%	Exchequer Stock 2013-2017
2½%	Indexed-linked Treasury Stock 2020
2½%	Indexed-linked Treasury Stock 2024
2½%	Annuities 1905 or after
2¾%	Annuities 1905 or after
2½%	Consolidated Stock 1923 or after
4%	Consolidated Loan 1957 or after
3½%	Conversion Loan 1961 or after
2½%	Treasury Stock 1975 or after
3%	Treasury Stock 1966 or after
3½%	War Loan 1952 or after
10%	Conversion Stock 1996 "A"
10%	Conversion Stock 1996 "B"
12%	Exchequer Stock 1998 "B"
9%	Conversion Stock 2000 "B"
13%	Treasury Stock 2000 "A"
10%	Treasury Stock 2001 "A"
10%	Treasury Stock 2001 "B"
9¾%	Treasury Stock 2002 "A"
9¾%	Treasury Stock 2002 "B"
10%	Treasury Stock 2003 "A"
9½%	Conversion Stock 2004 "A"
9%	Treasury Loan 2008 "B"
9%	Treasury Loan 2008 "C"
9%	Conversion Loan 2011 "A"

Securities issued by certain public corporations and guaranteed by the Treasury

3%	North of Scotland Electricity Stock 1989-92

SCHEDULE 10

Section 290.

CONSEQUENTIAL AMENDMENTS

Post Office Act 1969 c. 48

1 In section 74 of the Post Office Act 1969 for "Capital Gains Tax Act 1979"there shall be substituted " Taxation of Chargeable Gains Act 1992 ".

Taxes Management Act 1970 c. 9

2 (1) The Taxes Management Act 1970 shall have effect subject to the following amendments.

(2) In sections 11(1)(b), 27(1), 47(1), 57(1)(a), 78(3)(b), 111 and 119(4) for (2)In sections 11(1)(b), 27(1), 47(1), 57(1)(a), [F552]..., 111 and 119(4) for "Capital Gains Tax Act 1979" there shall be substituted " 1992 Act ".

(3) In section 12(2)—

(a) for "Capital Gains Tax Act 1979" there shall be substituted " 1992 Act ";
(b) for "19(4)" there shall be substituted " 51(1) ";
(c) for "71" there shall be substituted " 121 ";
(d) for "130, 131 or 133"there shall be substituted " 263, 268 or 269 ";
(e) for "128(6)" there shall be substituted " 262(6) ".

(4) In section 25(9) for "sections 64, 93 and 155(1) of the Capital Gains Tax Act 1979" there shall be substituted " sections 99 and 288(1) of the 1992 Act. "

(5) The following section shall be substituted for section 28 —

"**28** (1) A person holding shares or securities in a company which is not resident or ordinarily resident in the United Kingdom may be required by a notice by the Board to give such particulars as the Board may consider are required to determine whether the company falls within section 13 of the 1992 Act and whether any chargeable gains have accrued to that company in respect of which the person to whom the notice is given is liable to capital gains tax under that section.

(2) For the purposes of this section "company" and "shares" shall be construed in accordance with sections 99 and 288(1) of the 1992 Act."

(6) In section 30(2)(a) and (3)(a) for "47 of the Finance (No.2) Act 1975" there shall be substituted " 283 of the 1992 Act ".

(7) In section 31(3)(c) for "38 of the Finance Act 1973" there shall be substituted " 276 of the 1992 Act ".

(8) In section 86(4) for "7 of the Capital Gains Tax Act 1979" there shall be substituted " 7 of the 1992 Act ".

(9) In section 87A(3) for the words from "section 267(3C)" to "1979" there shall be substituted " 137(4), 139(7) or 179(11) of the 1992 Act or section 96(8) of the Finance Act 1990 ". This sub-paragraph shall come into force on the day appointed under section 95 of the Finance (No.2) Act 1987 for the purposes of section 85 of that Act.

(10) In section 98 —

(a) in column 1 of the Table —

(i) for "149D of the Capital Gains Tax Act 1979" there shall be substituted " 151 of the 1992 Act ";

(ii) for "6(9) of Schedule 1 to the Capital Gains Tax Act 1979" there shall be substituted " 2(9) of Schedule 1 to the 1992 Act ";

(iii) for "84 of the Finance Act 1981"there shall be substituted " 98 of the 1992 Act ";

(iv) for "Paragraph 7(1) of Schedule 10 to the Finance Act 1988"there shall be substituted " Section 79(6) of the 1992 Act ; "

(v) for "39 of the Finance Act 1990"there shall be substituted " 235 of the 1992 Act ";

(vi) for "12 of Schedule 16 to the Finance Act 1991" there shall be substituted " 10 of Schedule 5 to the 1992 Act "; and

(b) in column 2 of the Table —

(i) for "149D of the Capital Gains Tax Act 1979" there shall be substituted " 151 of the 1992 Act "; and

(ii) for "13 to 16 of Schedule 16 to the Finance Act 1991"there shall be substituted " 11 to 14 of Schedule 5 to the 1992 Act ".

(11) In section 118(1)—

(a) in the definition of "chargeable gain" for "Capital Gains Tax Act 1979" there shall be substituted " 1992 Act "; and

(b) in paragraph (b) of the definition of "the Taxes Acts" for "the Capital Gains Tax Act 1979" there shall be substituted " the Taxation of Chargeable Gains Act 1992 "and

(c) immediately after that definition there shall be inserted— " the 1992 Act "means the Taxation of Chargeable Gains Act 1992.

Textual Amendments

F552 Word in Sch. 10 para. 2(2) repealed (with effect in accordance with Sch. 29 Pt. 8(16) of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(16)**

Finance Act 1973 c. 51

3 (1) In section 38(2) of the Finance Act 1973 for "In this section and in Schedule 15 to this Act" there shall be substituted " Schedule 15 to this Act shall have effect and in that Schedule ".

(2) In paragraphs 2 and 4 of Schedule 15 to that Act for "38 of this Act" there shall be substituted " 276 of the Taxation of Chargeable Gains Act 1992 ".

British Aerospace Act 1980 c. 26

4 In section 12(2) of the British Aerospace Act 1980 for "272(5) of the Income and Corporation Taxes Act 1970" there shall be substituted " 170(12) of the Taxation of Chargeable Gains Act 1992 ".

British Telecommunications Act 1981 c. 38

5 In section 82(1) for "Capital Gains Tax Act 1979" and "Schedule 5" there shall be substituted respectively " Taxation of Chargeable Gains Act 1992 " and " Schedule 2 ".

Value Added Tax Act 1983 c. 55

F553 6 . . . . . .

Textual Amendments

F553 Sch. 10 para. 6 repealed (1.9.1994) by Value Added Tax Act 1994 (c. 23), s. 101(1), **Sch. 15**

Telecommunications Act 1984 c. 12

7 In section 72(2) of the Telecommunications Act 1984 for "272(5) of the Income and Corporation Taxes Act 1970" there shall be substituted " 170(12) of the Taxation of Chargeable Gains Act 1992 ".

Inheritance Tax Act 1984 c. 51

8 (1) The Inheritance Tax Act shall have effect subject to the following amendments.

(2) In section 31(4G)(b) for "147 of the Capital Gains Tax Act 1979" there shall be substituted " 258 of the 1992 Act ".

(3) In section 79(2) for "147 of the Capital Gains Tax Act" and "147" (where it secondly appears) there shall be substituted respectively " 258 of the 1992 Act "and " 258 ".

(4) In section 97 —

(a) the amendments made by section 138(6) of the Finance Act 1989 shall continue to have effect notwithstanding the repeal by this Act of that provision; and

(b) for "273(1) of the Taxes Act 1970", "272 of the Taxes Act 1970" and "273 to 281" there shall be substituted respectively " 171(1) of the 1992 Act ", " 170 of the 1992 Act "and " 171 to 181 ".

(5) In sections 107(4), 113A(6) and 124A(6) for "77 to 86 of the Capital Gains Tax Act 1979" there shall be substituted " 126 to 136 of the 1992 Act ".

(6) In section 135 for "section 78 of the Capital Gains Tax Act 1979", "84", "77(1)", "82", "85", "86", "78", "93" and "77(1) of the Capital Gains Tax Act 1979" there shall be substituted respectively " 127 of the 1992 Act ", " 134 ", " 126(1) ", " 132 ", " 135 ", " 136 ", " 127 ", " 99 "and " 126(1) ".

(7) In section 138 for "3 to the Capital Gains Tax Act 1979" there shall be substituted " 8 to the 1992 Act ".

(8) In section 165 for "Capital Gains Tax Act 1979" and "59" shall be substituted " 1992 Act "and " 282 ".

(9) In section 183 for "section 78 of the Capital Gains Tax Act 1979", "77(1)", "82", "85", "86", "78", "93" and "77(1) of the Capital Gains Tax Act 1979" there shall be substituted respectively " 127 of the 1992 Act ", " 126(1) ", " 132 ", " 135 ", " 136 ", " 127 ", " 99 "and " 126(1) ".

(10) In section 187 for "153 of the Capital Gains Tax Act 1979" shall be substituted " 274 of the 1992 Act ".

(11) In section 194 for "3 to the Capital Gains Tax Act 1979" there shall be substituted " 8 to the 1992 Act ".

(12) In section 270 for "Capital Gains Tax Act 1979" and "63" there shall be substituted " 1992 Act "and " 286 ".

(13) In section 272 at the end there shall be added " and "the 1992 Act" means the Taxation of Chargeable Gains Act 1992. "

Finance Act 1985 c. 54

9 In section 81 for "Capital Gains Tax Act 1979" there shall be substituted " Taxation of Chargeable Gains Act 1992 ".

Trustee Savings Bank Act 1985 c. 58

10 (1) In paragraph 2 of Schedule 2 to the Trustee Savings Bank Act 1985 —

(a) for "Capital Gains Tax Act 1979" there shall be substituted " 1992 Act "; and

(b) for "5 to the Act of 1979" there shall be substituted " 2 to the 1992 Act ".

(2) In paragraph 3 of that Schedule —

(a) for "II of Part II of the Act of 1979" there shall be substituted " III of Part II of the 1992 Act "; and

(b) for "12 of Schedule 5 to the Act of 1979" there shall be substituted " 16 of Schedule 2 to the 1992 Act ".

(3) In paragraph 4 of that Schedule —

(a) for "Act of 1979" (in three places) there shall be substituted " 1992 Act ";

(b) for "134" and "26" there shall be substituted respectively " 251 "and " 30 "; and

(c) for "278 of the Taxes Act" (in both places) there shall be substituted " 178 or 179 of the 1992 Act ".

(4) In paragraph 9 —

(a) at the end of sub-paragraph (1) there shall be added— "the 1992 Act" means the Taxation of Chargeable Gains Act 1992; "and

(b) in sub-paragraph (2) for "Capital Gains Tax Act 1979" there shall be substituted " 1992 Act ".

Transport Act 1985 c. 67

11 In section 130—

(a) in subsection (3) for "Capital Gains Tax Act 1979" and "5" there shall be substituted " Taxation of Chargeable Gains Act 1992 "and " 2 ";and

(b) in subsection (4) for "278 of the Income and Corporation Taxes Act 1970" there shall be substituted " 178 or 179 of the Taxation of Chargeable Gains Act 1992 ".

Airports Act 1986 c. 31

12 In section 77(2) of the Airports Act 1986 for "272(5) of the Income and Corporation Taxes Act 1970" there shall be substituted " 170(12) of the Taxation of Chargeable Gains Act 1992 ".

Gas Act 1986 c. 44

13 In section 60(2) of the Gas Act 1986 for "272(5) of the Income and Corporation Taxes Act 1970" there shall be substituted " 170(12) of the Taxation of Chargeable Gains Act 1992 ".

Income and Corporation Taxes Act 1988 c. 1

14 (1) The Income and Corporation Taxes Act 1988 shall have effect subject to the following amendments

(2) In section 11(2) for paragraph (b) there shall be substituted—

"(b) such chargeable gains as are, by virtue of section 10(3) of the 1992 Act, to be, or be included in, the company's chargeable profits,"

(3) In section 56(5) for "82 of the 1979 Act" there shall be substituted " 132 of the 1992 Act ".

(4) In section 119(1) after "122" there shall be inserted " and section 201 of the 1992 Act ".

(5) In section 122(4)(a) for "subsection (1)(b) above" there shall be substituted " section 201(1) of the 1992 Act ".

F554(6) . . . . . .

(7) In section 128 for "72 of the Finance Act 1985" and "(2A)" there shall be substituted respectively " 143 of the 1992 Act "and " (3) ".

F555(8) . . . . . .

(9) In section 137(1)(b) and (2) for "1979" there shall be substituted " 992 ".

(10) In section 139(14) for "32A(4) of the 1979 Act" there shall be substituted " 120(4) of the 1992 Act ".

(11) In sections 140(3) and 162(10)(d) for "1979" and "150" there shall be substituted respectively " 1992 "and " 272 ".

(12) In section 185—

(a) in subsection (3)(b) for "29A(1) of the 1979 Act" there shall be substituted " 17(1) of the 1992 Act "; and

(b) in subsection (7) for "32(1)(a) of the 1979 Act" there shall be substituted " 38(1)(a) of the 1992 Act ".

(13) In section 187(2) for "1979 Act" (in the definition of "market value") and "77(1)(b) of the 1979 Act" (in the definition of "new holding") there shall be substituted respectively " 1992 Act "and " 126(1)(b) of the 1992 Act ".

(14) In section 220 for "52 of the 1979 Act" (in subsection (2)) and "1979" (in subsection (9)) there shall be substituted respectively " 69 of the 1992 Act "and " 1992 ".

F556(15) . . . . . .

(16) In section 251 for "150(3) of the 1979 Act" and "152 of the 1979 Act" there shall be substituted respectively " 272(3) of the 1992 Act "and " 273 of the 1992 Act ".

(17) In sections 299 and 305 for "77(2)(a) of the 1979 Act" and "78" there shall be substituted respectively " 126(2)(a) of the 1992 Act "and " 127 ".

(18) In section 312 for "86(1) of the 1979 Act" and "150 of the 1979 Act" there shall be substituted respectively " 136(1) of the 1992 Act "and " 272 of the 1992 Act ".

(19) In section 399—

(a) in subsection (1) for "72(1) of the Finance Act 1985" there shall be substituted " 143(1) of the 1992 Act ", and

(b) in subsection (5) for "72 of the Finance Act 1985" and "(2A)" there shall be substituted " 143 of the 1992 Act "and " 143(3) "respectively.

(20) In section 400—

(a) in subsection (2)(e) for "345" there shall be substituted " 8 of the 1992 Act "; and

(b) in subsection (6) for "42 of the 1979" there shall be substituted " 50 of the 1992 ".

(21) In section 438(8) for "149B(1)(h) of the 1979 Act" there shall be substituted " 271(1)(h) of the 1992 Act ".

(22) In section 440—

(a) in subsection (3) for "273 or 274 of the 1970 Act" there shall be substituted " 171 or 173 the 1992 Act "; and

(b) in subsection (5) for "1979" there shall be substituted " 1992 ".

(23) In section 440A—

(a) in subsection (5) for "66 of the 1979 Act" there shall be substituted " 105 of the 1992 Act "; and

(b) for subsection (6) there shall be substituted—

"(6) In this section—

"1982 holding" has the same meaning as in section 109 of the 1992 Act;

"new holding" has the same meaning as in section 104(3) of that Act; and

"securities" means shares, or securities of a company, and any other assets where they are of a nature to be dealt in without identifying the particular assets disposed or or acquired."

(24) In section 442 for "1979 Act" there shall be substituted " 1992 Act ".

(25) In section 444A(8) for "88 of the 1979 Act" there shall be substituted " 138 of the 1992 Act ".

(26) In section 450(6) for "31 or 33 of the 1979" there shall be substituted " 37 or 39 of the 1992 ".

(27) In section 473—

(a) in subsections (2) [F557]... for "77 to 86 of the 1979" and "84" there shall be substituted respectively " 126 to 136 of the 1992 "and " 134 ";

(b) in subsection (6) for "82 of the 1979 Act", "86(7), 93 or 139" and "77 to 86" there shall be substituted respectively " 132 of the 1992 Act ", " 136(3), 147 or 99 "and " 126 to 136 ";

(c) in subsection (7) for "85 or 86 of the 1979" and "87(1)" there shall be substituted " 135 or 136 of the 1992 "and " 137(1) "respectively.

(28) In section 477B(5) for "64(3E) of the Finance Act 1984" there shall be substituted " 117(4) of the 1992 Act ".

[F558](29) . . . . . .

(30) In subsection (1) of section 502 in the definition of "ring fence profits" for "same meaning as in section 79(5) of the Finance Act 1984" there shall be substituted " meaning given by subsection (1A) below "and at the end of that subsection there shall be inserted—

"(1A) Where in accordance with section 197(3) of the 1992 Act a person has an aggregate gain for any chargeable period, that gain and his ring fence income (if any) for that period together constitute his ring fence profits for the purposes of this Chapter."

(31) In section 505(3), (5)(b) and (6) for "145 of the 1979 Act" there shall be substituted " 256 of the 1992 Act ".

(32) In section 513(3) for "272(5) of the 1970 Act" there shall be substituted " 170(12) of the 1992 Act ".

(33) In section 574(1) for "1979" there shall be substituted " 1992 ".

(34) In section 575—

(a) in subsection (1)(c) for "22(2) of the 1979 Act" there shall be substituted " 24(2) of the 1992 Act ";

(b) in subsection (2) for "78 of the 1979 Act" , in both places, there shall be substituted " 127 of the 1992 Act "; and

(c) in subsection (3) for "85 or 86 of the 1979 Act" and "87" there shall be substituted " 135 or 136 of the 1992 Act "and " 137 ".

(35) In section 576—

(a) in subsection (2) for "26 of the 1979 Act" and "(4)" there shall be substituted " 30 of the 1992 Act "and " (5) "; and

(b) in subsection (5)—

(i) for the definition of "holding" there shall be substituted— "holding" means any number of shares of the same class held by one person in one capacity, growing or diminishing as shares of that class are acquired or disposed of, but shares shall not be treated as being of the same class unless they are so treated by the practice of a recognised stock exchange or would be so treated if dealt with on such a stock exchange, and subsection (4) of section 104 of the 1992 Act shall apply for the purposes of this definition as it applies for the purposes of subsection (1) of that section; "

(ii) for "the first proviso to section 79(1) of the 1979 Act" there shall be substituted " paragraph (a) or (b) of section 128(2) "; and

(iii) for "155(2) of the 1979 Act" there shall be substituted " 288(3) of the 1992 Act ".

(36) In section 710—

(a) in subsection (2A) for "64(3E) of the Finance Act 1984" there shall be substituted " 117(4) of the 1992 Act "; and

(b) in subsection (13) for "82 of the 1979" shall be substituted " 132 of the 1992 ".

(37) In section 715(8) for "5(1) of Schedule 1 to the 1979", "12(3) of the 1979" and "18(4) of the 1979" there shall be substituted respectively " 1(1) of Schedule 1 to the 1992 ", " 10(6) of the 1992 "and " 275 of the 1992 ".

(38) In section 723(8) for "18(4) of the 1979" there shall be substituted " 275 of the 1992 ".

F559(39) . . . . . .

(40) In section 731(4B) for "(9) of section 137 of the 1979 Act" there shall be substituted " "(8) of section 144 of the 1992 Act ".

(41) In section 734(2) for "72(5)(b) of the 1979 Act" there shall be substituted " 122(5)(b) of the 1992 Act ".

(42) In section 740(6)(a) for "80 or 81(2) of the Finance Act 1981" there shall be substituted " 87 or 89(2) of the 1992 Act ".

(43) In section 757—

(a) in subsection (1) for "78 of the 1979" there shall be substituted " 127 of the 1992 ";

(b) in subsection (2) for "1979" there shall be substituted " 1992 ";

(c) in subsections (3) and (4) for "49 of the 1979" there shall be substituted " 62 of the 1992 ";

(d) in subsection (5) for "85", "1979" and "86" there shall be substituted respectively " 135 ", " 1992 "and " 136 ";

(e) in subsection (6) for "85(3) of the 1979" there shall be substituted " 135(3) of the 1992 "; and

(f) in subsection (7) for "Chapter II of Part II of the 1979" there shall be substituted " Chapter III of Part II of the 1992 ".

(44) In section 758—

(a) in subsection (5) for "78 of the 1979" there shall be substituted " 127 of the 1992 "; and

(b) in subsection (6) for "78 of the 1979", "85", "78 as" and "82" there shall be substituted respectively " 127 of the 1992 ", " 135 ", " 127 as "and " 132 ".

(45) In section 759(9) for "1979" and "150(4)" there shall be substituted " 1992 "and " 272(5) ".

(46) In section 760(4) for "78 of the 1979" there shall be substituted respectively " 127 of the 1992 ".

(47) In section 761—

(a) in subsection (2) for "2 and 12 of the 1979 Act" there shall be substituted " 2(1) and 10 of the 1992 Act ";

(b) in subsection (3) for "12 of the 1979 Act" there shall be substituted " 10 of the 1992 Act "and at the end of that subsection there shall be inserted " and subsection (3) of that section (which makes similar provision in relation to corporation tax) shall have effect with the omission of the words "situated in the United Kingdom ";

(c) in subsection (5) for "14 of the 1979 Act" there shall be substituted " 12 of the 1992 Act ";

(d) in subsections (6) and (7)(a) and (b) for "1979" there shall be substituted " 1992 ".

(48) In section 762—

(a) in subsection (1) for "15 of the 1979 Act" there shall be substituted " 13 of the 1992 Act ";

(b) in subsection (2)—

(i) for "80 to 84 of the Finance Act 1981" there shall be substituted " 87 to 90 and 96 to 98 of the 1992 Act ";

(ii) in paragraph (a) for "80(5)" there shall be substituted " 87(6) ";

(iii) in paragraph (b) for the words from the beginning to "1979" there shall be substituted " in section 87(2) of the 1992 Act for the words "tax under section 2(2)" ;

(iv) in paragraph (c) for "80(6)" there shall be substituted " 87(7) "; and

(v) in paragraph (d) for "80(8) and 83(6)" there shall be substituted " 87(10) and 97(6) ";

(c) in subsection (3) for "80(5) of the Finance Act 1981" there shall be substituted " 87(6) of the 1992 Act "; and

(d) in subsection (4) for "80 of the Finance Act 1981" there shall be substituted " 87 of the 1992 Act ".

(49) In section 763—

(a) for "the 1979 Act disposal", in each place, there shall be substituted " the 1992 Act disposal ";

(b) in subsections (1) and (6) for "1979" there shall be substituted " 1992 ";

(c) in subsection (2) for "31(1)" there shall be substituted " 37(1) ";

(d) in subsection (3) for "computation under Chapter II of Part II of the 1979 Act of any gain" there shall be substituted " computation of the gain ";

(e) in subsection (4) for "35" there shall be substituted " 42 ";

(f) in subsection (5) for "123" there shall be substituted " 162 "; and

(g) in subsection (6) for "79" there shall be substituted " 128 ".

(50) In section 776(9) for "101 to 105 of the 1979" and "103(3)" there shall be substituted respectively " 222 to 226 of the 1992 "and " 224(3) ".

(51) In section 777 in subsections (11) and (12) for "122 of the 1979" and "31 and 33 of the 1979" there shall be substituted " 161 of the 1992 "and " 37 and 39 of the 1992 "respectively.

(52) In section 824(8) for "47 of the Finance (No.2) Act 1975" there shall be substituted " 283 of the 1992 Act ".

(53) In section 831—

(a) at the end of subsection (3) there shall be inserted— "the 1992 Act" means the Taxation of Chargeable Gains Act 1992. "; and

(b) in subsection (5) for "1979" there shall be substituted " 1992 ".

(54) In section 832(1) in the definition of "chargeable gain" for "1979" there shall be substituted " 1992 ".

(55) In section 842(4) for "64, 93 and 155(1) of the 1979 Act" there shall be substituted " 99 and 288 of the 1990 Act ".

(56) In section 843(2) for "10 of the 1979 Act" there shall be substituted " 277 of the 1990 Act ".

F560(57) . . . . . .

(58) In paragraph 5(7) of Schedule 10 for "1979" there shall be substituted " 1992 ".

(59) In paragraph 12(2) of Schedule 20 for "145 of the 1979" there shall be substituted " 256 of the 1992 ".

(60) In paragraph 7 of Schedule 22 for "149B(1)(g) of the 1979" there shall be substituted " 271(1)(g) of the 1992 ".

F561(61) . . . . . .

(62) In paragraph 3 of Schedule 26 for "II of Part II of the 1979" there shall be substituted " III of Part II of the 1992 ".

(63) In Schedule 28—

(a) in paragraph 2 for "1979" and "Chapter III of Part III of the Finance Act 1982" there shall be substituted respectively " 1992 "and " the 1992 Act ";

(b) in paragraph 3—

(i) for "paragraph 2 of Schedule 13 to the Finance Act 1982" there shall be substituted " section 56(2) of the 1992 Act ";

(ii) for "123 of the 1979 Act" there shall be substituted " 162 of the 1992 Act ";

(iii) in sub-paragraph (3) for the words from "section" to "shall" there shall be substituted " section 165 or 260 of the 1992 Act (relief for gifts) the claim shall ";

F562(iv) . . . . . .

(v) for "29 of the 1979 Act" there shall be substituted " 16 of the 1992 Act ";

(c) in paragraphs 4(3)(b) and 8(3) for "86(5) of or Schedule 13 to the Finance Act 1982" and "86(5)(b) of or Schedule 13 to the Finance Act 1982" there shall be substituted " 56, 57, 131 or 145 of the 1992 Act "and for "1979" there shall be substituted " 1992 ".

Textual Amendments

F554 Sch. 10 para. 14(6) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F555 Sch. 10 para. 14(8) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. VI(10)**

F556 Sch. 10 para. 14(15) repealed (with effect in accordance with Sch. 3 of the amending Act) by Finance Act 1998 (c. 36), **Sch. 27 Pt. III(2)**

F557 Words in Sch. 10 para. 14(27)(a) repealed (with effect in accordance with s. 164(5) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(24)**

F558 Sch. 10 para. 14(29) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F559 Sch. 10 para. 14(39) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. VI(10)**

F560 Sch. 10 para. 14(57) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

F561 Sch. 10 para. 14(61) repealed (with effect in accordance with Sch. 10 para. 7(1) of the amending Act) by Finance Act 1997 (c. 16), **Sch. 18 Pt. VI(10)**

F562 Sch. 10 para. 14(63)(b)(iv) repealed (with effect in accordance with Sch. 8 para. 55 of the amending Act) by Finance Act 1995 (c. 4), **Sch. 29 Pt. VIII(5)**

British Steel Act 1988 c. 35

15 In section 11(2) of the British Steel Act 1988 for "272(5) of the Income and Corporation Taxes Act 1970" there shall be substituted " 170(12) of the Taxation of Chargeable Gains Act 1992 ".

Finance Act 1988 c. 39

16 (1) The Finance Act 1988 shall have effect subject to the following amendments.

(2) In section 50(4) for "3 to the Capital Gains Tax Act 1979" there shall be substituted " 8 to the Taxation of Chargeable Gains Act 1992 ".

(3) In section 68(4) for "29A(1) of the Capital Gains Tax Act 1979" there shall be substituted " 17(1) of the Taxation of Chargeable Gains Act 1992 ".

(4) In section 82(3)—

(a) for "78 to 81 of the Capital Gains Tax Act 1979" there shall be substituted " 127 to 130 of the Taxation of Chargeable Gains Act 1992 "; and

(b) for "78", "79(1)" and "79(2)" there shall be substituted respectively " 127 ", " 128(1) and (2) "and " 128(3) ".

(5) In section 84 for "32(1)(a) of the Capital Gains Tax Act 1979" there shall be substituted " 38(1)(a) of the Taxation of Chargeable Gains Act 1992 ".

(6) In section 132(6) for "272 of the Taxes Act 1970" there shall be substituted " 170 of the Taxation of Chargeable Gains Act 1992 ".

(7) In paragraph 6(2) of Schedule 12 for "72 of the Capital Gains Tax Act 1979" there shall be substituted " 122 of the Taxation of Chargeable Gains Act 1992 ".

Health and Medicines Act 1988 c. 49

17 In section 6(2) of the Health and Medicines Act 1988 for "272(5) of the Income and Corporation Taxes Act 1970" there shall be substituted " 170(12) of the Taxation of Chargeable Gains Act 1992 ".

Water Act 1989 c. 15

18 In section 95 of the Water Act 1989—

(a) in subsection (4) for "Capital Gains Tax Act 1979 ("the 1979 Act")" there shall be substituted " Taxation of Chargeable Gains Act 1992 ("the 1992 Act") ";

(b) in subsection (5) for "1979" there shall be substituted " 1992 "; and

(c) in subsection (6) for "134 of the 1979" there shall be substituted " 251 of the 1992 ".

Finance Act 1989 c. 26

19 (1) In section 69(9) of the Finance Act 1989 for "85(1) of the Capital Gains Tax Act 1979" and "77" there shall be substituted " 135(1) of the Taxation of Chargeable Gains Act 1992 "and " 126 ".

(2) In section 70(2) of that Act for "Capital Gains Tax Act 1979" and "32(1)(a)" there shall be substituted " Taxation of Chargeable Gains Act 1992 "and " 38(1)(a) ".

(3) In section 158(2) of that Act in paragraph (a) for "section 47(1) of the Finance (No.2) Act 1975" there shall be substituted " section 283(1) of the Taxation of Chargeable Gains Act 1992 ".

(4) In section 178(2) of that Act for paragraph (i) there shall be substituted—

"(i) section 283 of the Taxation of Chargeable Gains Act 1992";

(5) In Schedule 5 to that Act in paragraphs 8 and 11 for "85(1) of the Capital Gains Tax Act 1979" and "77" there shall be substituted " 135(1) of the Taxation of Chargeable Gains Act 1992 "and " 126 ".

F563(6) . . . . . .

Textual Amendments

F563 Sch. 10 para. 19(6) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

Electricity Act 1989 c. 29

20 (1) In paragraph 2 of Schedule 11 to the Electricity Act 1989 for "278 of the Income and Corporation Taxes Act 1970" and "272 of the Income and Corporation Act 1970" there shall be substituted respectively " 178 or 179 of the 1992 Act "and " 170 of the 1992 Act "; and at the end of that paragraph there shall be added—

"(2A) In this Schedule "the 1992 Act" means the Taxation of Chargeable Gains Act 1992."

(2) In paragraph 3 of that Schedule for "117 of the Capital Gains Tax Act 1979" and "117" (where it secondly appears) there shall be substituted " 154 of the 1992 Act "and " 154 ".

(3) In paragraphs 4 and 5 of that Schedule for "Capital Gains Tax Act 1979" (in each place) there shall be substituted " 1992 Act ".

Capital Allowances Act 1990 c. 1

21 (1) The following section shall be inserted in the Capital Allowances Act 1990 after section 118—

"Disposals of oil licences relating to undeveloped areas

118A (1) If, at the time of the material disposal of a licence, the licence relates to an undeveloped area, then, to the extent that the consideration for the disposal consists of—

(a) another licence which at that time relates to an undeveloped area or an interest in another such licence, or

(b) an obligation to undertake exploration work or appraisal work in an area which is or forms part of the licensed area in relation to the licence disposed of,

the value of that consideration shall be treated as nil for the purposes of this Part and Part VII.

(2) For the purposes of this section "material disposal" means a disposal (including a part disposal) other than a disposal in relation to which sections 157 and 158 of this Act have effect.

(3) If a material disposal of a licence which, at the time of the disposal, relates to an undeveloped area is part of a larger transaction under which one party makes to another material disposals of two or more licences, each of which at the time of the disposal relates to an undeveloped area, the reference in subsection (1)(b) above to the licensed area in relation to the licence disposed of shall be construed as a reference to the totality of the licensed areas in relation to those two or more licences.

(4) Expressions used in this section and in section 194 of the Taxation of Chargeable Gains Act 1992 have the same meaning in this section as they have in that."

(2) In section 138 of that Act the following subsection shall be inserted after subsection (7)—

"(7A) Where the relevant event is the material disposal of a licence for the purposes of section 118A, subsection (4) above shall have effect subject to that section."

Finance Act 1990 c. 29

22 (1) The Finance Act 1990 shall have effect subject to the following amendments.

(2) In section 116(5) for "150(1) to (3) and 152 of the Capital Gains Tax Act 1979" there shall be substituted " 272(1) to (4) and 273 of the Taxation of Chargeable Gains Act 1992 ".

(3) In section 120 for "27 of the Capital Gains Tax Act 1979" there shall be substituted " 28 of the Taxation of Chargeable Gains Act 1992 ".

F564(4) . . . . . .

(5) In Schedule 12—

(a) in paragraph 2—

(i) for "the Capital Gains Tax Act 1979 ("the 1979 Act")" there shall be substituted " the Taxation of Chargeable Gains Act 1992 ("the 1992 Act") ";

(ii) for "5" there shall be substituted " 2 "; and

(iii) for "134 of the 1979" there shall be substituted " 251 of the 1992 ";

(b) in paragraphs 4, 5 and 6 for "1979" there shall be substituted " 1992 ";

(c) in paragraph 7 for "115 to 119 of the 1979" there shall be substituted " 152 to 156 of the 1992 "; and

(d) in paragraph 10 for the definition of "the 1979 Act" there shall be substituted — "the 1992 Act" means the Taxation of Chargeable Gains Act 1992. "

Textual Amendments

F564 Sch. 10 para. 22(4) repealed (with effect in accordance with s. 105(1) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 41 Pt. V(3)** (with Sch. 15)

Finance Act 1991 c. 31.

23 In section 72(4) of the Finance Act 1991 for "5(1) of the Capital Gains Tax Act 1979" there shall be substituted " 3(1) of the Taxation of Chargeable Gains Act 1992 ".

Ports Act 1991 c. 52

24 (1) In section 16 of the Ports Act 1991 for "Capital Gains Tax Act 1979" and "29A(1)" there shall be substituted respectively " 1992 Act "and " 17(1) ".

(2) In section 17 of that Act—

(a) for "1979" (wherever it occurs) there shall be substituted " 1992 ";

(b) in subsection (6) for "278(3) or (3C) of the Income and Corporation Taxes Act 1970" there shall be substituted " 178(3) or (5) or 179(3) or (6) of the 1992 Act ";

(c) in subsection (7)—

(i) for paragraph (a) there shall be substituted—

"(a) "the relevant six-year limit" means in relation to section 178(3) or 179(3) the six year period mentioned in section 178(1) or 179(1) and in relation to section 178(5) or

179(6) the six year period mentioned in 178(5)(a) or 179(6)(a); and"; and

(ii) in paragraph (b) for "278(3)", "278(3C)" and "subsection (3D) of that section" there shall be substituted " 178(3) or 179(3) ", " 178(5) or 179(6) "and " section 178(6) or 179(7) "respectively; and

(d) in subsection (13) for "272 to 281 of the Income and Corporation Taxes Act 1970", "(1E) and (1F) of section 272" and "(1E)" there shall be substituted " 170 to 181 of the 1992 Act ", " (7) and (8) of section 170 "and " (7) "respectively.

(3) In section 18 of that Act—

(a) in subsections (2) and (8) for "1979" there shall be substituted " 1992 ";

(b) in subsection (4) for "267(1) or 273(1) of the Income and Corporation Taxes Act 1970" there shall be substituted " 139(1) or 171(1) of the 1992 Act ".

(4) In section 20 of that Act for "27 of the Capital Gains Tax Act 1979" there shall be substituted " 28 of the 1992 Act ".

(5) In section 35 of that Act—

(a) in subsection (3) for "Capital Gains Tax Act 1979" there shall be substituted " 1992 Act "; and

(b) in subsection (6) for "278 of the Income and Corporation Taxes Act 1970" and "273 to 281" there shall be substituted " 178 or 179 of the 1992 Act "and " 171 to 181 ".

(6) In section 40(1) of that Act there shall be added at the end " and "the 1992 Act" means the Taxation of Chargeable Gains Act 1992. "

British Technology Group Act 1991 c. 66

25 In section 12(2) of the British Technology Group Act 1991 for "345 of the Income and Corporation Taxes Act 1988" there shall be substituted " 8 of the Taxation of Chargeable Gains Act 1992 ".

SCHEDULE 11

Section 290.

TRANSITIONAL PROVISIONS AND SAVINGS

PART I

VALUATION

Preliminary

1 (1) This Part of this Schedule has effect in cases where the market value of an asset at a time before the commencement of this Act is material to the computation of a gain under this Act; and in this Part any reference to an asset includes a reference to any part of an asset.

(2) Where sub-paragraph (1) above applies, the market value of an asset (or part of an asset) at any time before the commencement of this Act shall be determined in accordance with sections 272 to 274 but subject to the following provisions of this Part.

(3) In any case where section 274 applies in accordance with sub-paragraph (2) above the reference in that section to inheritance tax shall be construed as a reference to capital transfer tax.

Gifts and transactions between connected persons before 20th March 1985

2 (1) Where sub-paragraph (1) above applies for the purpose of determining the market value of any asset at any time before 20th March 1985 (the date when section 71 of the Finance Act 1985, now section 19, replaced section 151 of the 1979 Act, which is reproduced below) sub-paragraphs (2) to (4) below shall apply.

(2) Except as provided by sub-paragraph (4) below section 19 shall not apply in relation to transactions occurring before 20th March 1985.

(3) If a person is given, or acquires from one or more persons with whom he is connected, by way of 2 or more gifts or other transactions, assets of which the aggregate market value, when considered separately in relation to the separate gifts or other transactions, is less than their aggregate market value when considered together, then for the purposes of this Act their market value shall be taken to be the larger market value, to be apportioned rateably to the respective disposals.

(4) Where—

(a) one or more transactions occurred on or before 19th March 1985 and one or more after that date, and

(b) had all the transactions occurred before that date sub-paragraph (3) above would apply, and had all the transactions occurred after that date section 19 would have applied,

then those transactions which occurred on or before that date and not more than 2 years before the first of those which occurred after that date shall be treated as material transactions for the purposes of section 19.

Valuation of assets before 6th July 1973

3 Section 273 shall apply for the purposes of determining the market value of any asset at any time before 6th July 1973 (the date when the provisions of section 51(1) to (3) of the Finance Act 1973, which are now contained in section 273, came into force) notwithstanding that the asset was acquired before that date or that the market value of the asset may have been fixed for the purposes of a contemporaneous disposal, and in paragraphs 4 and 5 below a "section 273 asset" is an asset to which section 273 applies.

4 (1) This paragraph applies if, in a case where the market value of a section 273 asset at the time of its acquisition is material to the computation of any chargeable gain under this Act—

(a) the acquisition took place on the occasion of a death occurring after 30th March 1971 and before 6th July 1973, and

(b) by virtue of paragraph 9 below, the principal value of the asset for the purposes of estate duty on that death would, apart from this paragraph, be

taken to be the market value of the asset at the date of the death for the purposes of this Act.

(2) If the principal value referred to in sub-paragraph (1)(b) above falls to be determined as mentioned in section 55 of the Finance Act 1940 or section 15 of the Finance (No.2) Act (Northern Ireland) 1946 (certain controlling shareholdings to be valued on an assets basis), nothing in section 273 shall affect the operation of paragraph 9 below for the purpose of determining the market value of the asset at the date of the death.

(3) If sub-paragraph (2) above does not apply, paragraph 9 below shall not apply as mentioned in sub-paragraph (1)(b) above and the market value of the asset on its acquisition at the date of the death shall be determined in accordance with sections 272 (but with the same modifications as are made by paragraphs 7 and 8 below) and 273.

5 (1) In any case where—

(a) before 6th July 1973 there has been a part disposal of a section 273 asset ("the earlier disposal"), and

(b) by virtue of any enactment, the acquisition of the asset or any part of it was deemed to be for a consideration equal to its market value, and

(c) on or after 6th July 1973 there is a disposal (including a part disposal) of the property which remained undisposed of immediately before that date ("the later disposal"),

sub-paragraph (2) below shall apply in computing any chargeable gain accruing on the later disposal.

(2) Where this sub-paragraph applies, the apportionment made by virtue of paragraph 7 of Schedule 6 to the Finance Act 1965 (corresponding to section 42 of this Act) on the occasion of the earlier disposal shall be recalculated on the basis that section 273(3) of this Act was in force at the time and applied for the purposes of the determination of—

(a) the market value referred to in sub-paragraph (1)(b) above, and

(b) the market value of the property which remained undisposed of after the earlier disposal, and

(c) if the consideration for the earlier disposal was, by virtue of any enactment, deemed to be equal to the market value of the property disposed of, that market value.

Valuation of assets on 6th April 1965

6 (1) For the purpose of ascertaining the market value of any shares or securities in accordance with paragraph 1(2) of Schedule 2, section 272 shall have effect subject to the provisions of this paragraph.

(2) Subsection (3)(a) shall have effect as if for the words, "one-quarter" there were substituted the words " one-half ", and as between the amount under paragraph (a) and the amount under paragraph (b) of that subsection the higher, and not the lower, amount shall be chosen.

(3) Subsection (5) shall have effect as if for the reference to an amount equal to the buying price there were substituted a reference to an amount halfway between the buying and selling prices.

(4) Where the market value of any shares or securities not within section 272(3) falls to be ascertained by reference to a pair of prices quoted on a stock exchange, an adjustment shall be made so as to increase the market value by an amount corresponding to that by which any market value is increased under sub-paragraph (2) above.

References to the London Stock Exchange before 25th March 1973and Exchange Control restrictions before 13th December 1979

7 (1) For the purposes of ascertaining the market value of an asset before 25th March 1973 section 272(3) and (4) shall have effect subject to the following modifications—

(a) for "**[**[F565]quoted**]** in The Stock Exchange Daily Official List" and "quoted in that List" there shall be substituted respectively " quoted on the London Stock Exchange "and " so quoted ";

(b) for "The Stock Exchange Daily Official List" there shall be substituted " the Stock Exchange Official Daily List ";

(c) for "The Stock Exchange provides a more active market elsewhere than on the London trading floor" there shall be substituted " some other stock exchange in the United Kingdom affords a more active market "; and

(d) for "if the London trading floor is closed" there shall be substituted " if the London Stock Exchange is closed ".

(2) For the purposes of ascertaining the market value of an asset before 13th December 1979 section 272 shall have effect as if the following subsection were inserted after subsection (5)—

"(5A) In any case where the market value of an asset is to be determined at a time before 13th December 1979 and the asset is of a kind the sale of which was (at the time the market value is to be determined) subject to restrictions imposed under the Exchange Control Act 1947 such that part of what was paid by the purchaser was not retainable by the seller, the market value, as arrived at under subsection (1), (3), (4) or (5) above, shall be subject to such adjustment as is appropriate having regard to the difference between the amount payable by a purchaser and the amount receivable by a seller."

Textual Amendments

F565 Word in Sch. 11 para. 7(1)(a) substituted (with effect in accordance with Sch. 38 para. 12(3) of the amending Act) by Finance Act 1996 (c. 8), **Sch. 38 para. 12(2)**

Depreciated valuations referable to deaths before 31st March 1973

8 In any case where this Part applies, section 272(2) shall have effect as if the following proviso were inserted at the end—

Provided that where capital gains tax is chargeable, or an allowable loss accrues, in consequence of a death before 31st March 1973 and the market value of any property on the date of death taken into account for the purposes of that tax or loss has been depreciated by reason of the death, the estimate of the market value shall take that depreciation into account.

Estate duty

9 (1) Where estate duty (including estate duty leviable under the law of Northern Ireland) is chargeable in respect of any property passing on a death after 30th March 1971 and the principal value of an asset forming part of that property has been ascertained (whether in any proceedings or otherwise) for the purposes of that duty, the principal value so ascertained shall, subject to paragraph 4(3) above, be taken for the purposes of this Act to be the market value of that asset at the date of the death.

(2) Where the principal value has been reduced under section 35 of the Finance Act 1968 or section 1 of the Finance Act (Northern Ireland) 1968 (tapering relief for gifts inter vivos etc.), the reference in sub-paragraph (1) above to the principal value as ascertained for the purposes of estate duty is a reference to that value as so ascertained before the reduction.

PART II

OTHER TRANSITORY PROVISIONS

Value-shifting

10 (1) Section 30 applies only where the reduction in value mentioned in subsection (1) of that section (or, in a case within subsection (9) of that section, the reduction or increase in value) is after 29th March 1977.

(2) No account shall be taken by virtue of section 31 of any reduction in the value of an asset attributable to the payment of a dividend before 14th March 1989.

(3) No account shall be taken by virtue of section 32 of any reduction in the value of an asset attributable to the disposal of another asset before 14th March 1989.

(4) Section 34 shall not apply where the reduction in value, by reason of which the amount referred to in subsection (1)(b) of that section falls to be calculated, occurred before 14th March 1989.

Assets acquired on disposal chargeable under Case VII of Schedule D

11 (1) In this paragraph references to a disposal chargeable under Case VII are references to cases where the acquisition and disposal was in circumstances that the gain accruing on it was chargeable under Case VII of Schedule D, or where it would have been so chargeable if there were a gain so accruing.

(2) The amount or value of the consideration for the acquisition of an asset by the person acquiring it on a disposal chargeable under Case VII shall not under any provision of this Act be deemed to be an amount greater than the amount taken into account as consideration on that disposal for the purposes of Case VII.

(3) Any apportionment of consideration or expenditure falling to be made in relation to a disposal chargeable under Case VII in accordance with section 164(4) of the Income and Corporation Taxes Act 1970, and in particular in a case where section 164(6) of that Act (enhancement of value of land by acquisition of adjoining land) applied, shall be followed for the purposes of this Act both in relation to a disposal of the assets acquired on the disposal chargeable under Case VII and, where the disposal

chargeable under Case VII was a part disposal, in relation to a disposal of what remains undisposed of.

(4) Sub-paragraph (3) above has effect notwithstanding section 52(4).

Unrelieved Case VII losses

12 Where no relief from income tax (for a year earlier than 1971-72) has been given in respect of a loss or part of a loss allowable under Case VII of Schedule D, the loss or part shall, notwithstanding that the loss accrued before that year, be an allowable loss for the purposes of capital gains tax, but subject to any restrictions imposed by section 18.

Devaluation of sterling: securities acquired with borrowed foreign currency

13 (1) This paragraph applies where, in pursuance of permission granted under the Exchange Control Act 1947, currency other than sterling was borrowed before 19th November 1967 for the purpose of investing in foreign securities (and had not been repaid before that date), and it was a condition of the permission—

(a) that repayment of the borrowed currency should be made from the proceeds of the sale in foreign currency of the foreign securities so acquired or out of investment currency, and

(b) that the foreign securities so acquired should be kept in separate accounts to distinguish them from others in the same ownership,

and securities held in such a separate account on 19th November 1967 are in this paragraph referred to as "designated securities" .

(2) In computing the gain accruing to the borrower on the disposal of any designated securities or on the disposal of any currency or amount standing in a bank account on 19th November 1967 and representing the loan, the sums allowable as a deduction under section 38(1)(a) shall, subject to sub-paragraph (3) below, be increased by multiplying them by seven-sixths.

(3) The total amount of the increases so made in computing all gains (and losses) which are referable to any one loan (made before 19th November 1967) shall not exceed one-sixth of the sterling parity value of that loan at the time it was made.

(4) Designated securities which on the commencement of this paragraph constitute a separate 1982 holding (within the meaning of section 109), shall continue to constitute a separate 1982 holding until such time as a disposal takes place on the occurrence of which sub-paragraph (3) above operates to limit the increases which would otherwise be made under sub-paragraph (2) in allowable deductions.

(5) In this paragraph and paragraph 14 below, "foreign securities" means securities expressed in a currency other than sterling, or shares having a nominal value expressed in a currency other than sterling, or the dividends on which are payable in a currency other than sterling.

Devaluation of sterling: foreign insurance funds

14 (1) The sums allowable as a deduction under section 38(1)(a) in computing any gains to which this paragraph applies shall be increased by multiplying by seven-sixths.

(2) This paragraph applies to gains accruing—

(a) to any underwriting member of Lloyd's, or

(b) to any company engaged in the business of marine protection and indemnity insurance on a mutual basis, on the disposal by that person after 18th November 1967 of any foreign securities which on that date formed part of a trust fund—

(i) established by that person in any country or territory outside the United Kingdom, and

(ii) representing premiums received in the course of that person's business, and

(iii) wholly or mainly used for the purpose of meeting liabilities arising in that country or territory in respect of that business.

Gilt-edged securities past redemption date

15 So far as material for the purposes of this or any other Act, the definition of "gilt-edged securities" in Schedule 9 to this Act shall include any securities which were gilt-edged securities for the purposes of the 1979 Act, and the redemption date of which fell before 1st January 1992.

Qualifying corporate bonds, company reorganisations, share conversions etc.

16 (1) Part IV of this Act has effect subject to the provisions of this paragraph.

(2) The substitution of Chapter II of that Part for the enactments repealed by this Act shall not alter the law applicable to any reorganisation or reduction of share capital, conversion of securities or company amalgamation taking place before the coming into force of this Act.

(3) Sub-paragraph (2) above applies in particular to the law determining whether or not any assets arising on an event mentioned in that sub-paragraph are to be treated as the same asset as the original holding of shares, securities or other assets.

(4) In relation to a disposal or exchange on or after 6th April 1992, the following amendments shall be regarded as always having had effect, that is to say, the amendments to section 64 of, or Schedule 13 to, the Finance Act 1984 made by section 139 of, or paragraph 6 of Schedule 14 to, the Finance Act 1989, paragraph 28 of Schedule 10 to the Finance Act 1990 or section 98 of, or paragraph 1 of Schedule 10 to, the Finance Act 1991, or by virtue of the amendments to paragraph 1 of Schedule 18 to the Taxes Act made by section 77 of the Finance Act 1991.

Land: allowance for betterment levy

17 (1) Where betterment levy charged in the case of any land in respect of an act or event which fell within Case B or Case C or, if it was the renewal, extension or variation of a tenancy, Case F—

(a) has been paid, and

(b) has not been allowed as a deduction in computing the profits or gains or losses of a trade for the purposes of Case I of Schedule D;

then, if the person by whom the levy was paid disposes of the land or any part of it and so claims, the following provisions of this paragraph shall have effect.

(2) Paragraph 9 of Schedule 2 shall apply where the condition stated in sub-paragraph (1)(a) of that paragraph is satisfied, notwithstanding that the condition in sub-paragraph (1)(b) of that paragraph is not satisfied.

(3) Subject to the following provisions of this paragraph, there shall be ascertained the excess, if any, of—

(a) the net development value ascertained for the purposes of the levy, over

(b) the increment specified in sub-paragraph (6) below;

and the amount of the excess shall be treated as an amount allowable under section 38(1)(b).

(4) Where the act or event in respect of which the levy was charged was a part disposal of the land, section 38 shall apply as if the part disposal had not taken place and sub-paragraph (5) below shall apply in lieu of sub-paragraph (3) above.

(5) The amount or value of the consideration for the disposal shall be treated as increased by the amount of any premium or like sum paid in respect of the part disposal, and there shall be ascertained the excess, if any, of—

(a) the aggregate specified in sub-paragraph (7) below, over

(b) the increment specified in sub-paragraph (6) below;

and the amount of the excess shall be treated as an amount allowable under section 38(1)(b).

(6) The increment referred to in sub-paragraphs (3)(b) and (5)(b) above is the excess, if any, of—

(a) the amount or value of the consideration brought into account under section 38(1)(a), over

(b) the base value ascertained for the purposes of the levy.

(7) The aggregate referred to in sub-paragraph (5)(a) above is the aggregate of—

(a) the net development value ascertained for the purposes of the levy, and

(b) the amount of any premium or like sum paid in respect of the part disposal, in so far as charged to tax under Schedule A (or, as the case may be, Case VIII of Schedule D), and

(c) the chargeable gain accruing on the part disposal.

(8) Where betterment levy in respect of more than one act or event has been charged and paid as mentioned in sub-paragraph (1) above, sub-paragraphs (2) to (7) above shall apply without modifications in relation to the betterment levy in respect of the first of them; but in relation to the other or others sub-paragraph (3) or, as the case may be, (5) above shall have effect as if the amounts to be treated thereunder as allowable under section 38(1)(b) were the net development value specified in sub-paragraph (3)(a) or, as the case may be, the aggregate referred to in subparagraph (5)(a) of this paragraph.

(9) Where the disposal is of part only of the land sub-paragraphs (2) to (8) above shall have effect subject to the appropriate apportionments.

(10) References in this paragraph to a premium include any sum payable as mentioned in section 34(4) or (5) of the Taxes Act (sums payable in lieu of rent or as consideration for the surrender of lease or for variation or waiver of term) and, in relation to Scotland, a grassum.

Non-resident trusts

18 Without prejudice to section 289 or Part III of this Schedule—

(a) any tax chargeable on a person which is postponed under subsection (4)(b) of section 17 of the 1979 Act shall continue to be postponed until that person becomes absolutely entitled to the part of the settled property concerned or disposes of the whole or part of his interest, as mentioned in that subsection; and

(b) section 70 of and Schedule 14 to the Finance Act 1984 shall continue to have effect in relation to amounts of tax which are postponed under that Schedule, and accordingly in paragraph 12 of that Schedule the references to section 80 of the Finance Act 1981 and to subsections (3) and (4) of that section include references to section 87 of this Act and subsections (4) and (5) of that section respectively.

Private residences

19 The reference in section 222(5)(a) to a notice given by any person within 2 years from the beginning of the period mentioned in section 222(5) includes a notice given before the end of the year 1966-67, if that was later.

Works of art etc.

20 The repeals made by this Act do not affect the continued operation of sections 31 and 32 of the Finance Act 1965 , in the form in which they were before 13th March 1975, in relation to estate duty in respect of deaths occurring before that date.

Disposal before acquisition

21 The substitution of this Act for the corresponding enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not there is a corresponding provision in this Act) so far as it relates to an asset which—

(a) was disposed of before being acquired, and

(b) was disposed of before the commencement of this Act.

Estate duty

22 Nothing in the repeals made by this Act shall affect any enactment as it applies to the determination of any principal value for the purposes of estate duty.

Validity of subordinate legislation

23 So far as this Act re-enacts any provision contained in a statutory instrument made in exercise of powers conferred by any Act, it shall be without prejudice to the validity of that provision, and any question as to its validity shall be determined as if the re-enacted provision were contained in a statutory instrument made under those powers.

Amendments in other Acts

24 (1) The repeal by this Act of the Income and Corporation Taxes Act 1970 does not affect—

(a) the amendment made by paragraph 3 of Schedule 15 of that Act to section 26 of the Finance Act 1956, or

(b) paragraph 10 of that Schedule so far it applies in relation to the Management Act.

(2) The repeal by this Act of Schedule 7 to the 1979 Act does not affect the amendments made by that Schedule to any enactment not repealed by this Act.

Saving for Part III of this Schedule

25 The provisions of this Part of this Schedule are without prejudice to the generality of Part III of this Schedule.

PART III

ASSETS ACQUIRED BEFORE COMMENCEMENT

26 (1) The substitution of this Act for the enactments repealed by this Act shall not alter the effect of any provision enacted before this Act (whether or not there is a corresponding provision in this Act) so far as it determines—

(a) what amount the consideration is to be taken to be for the purpose of the computation under this Act of any chargeable gain; or

(b) whether and to what extent events in, or expenditure incurred in, or other amounts referable to, a period earlier than the chargeable periods to which this Act applies may be taken into account for any tax purposes in a chargeable period to which this Act applies.

(2) Without prejudice to sub-paragraph (1) above, the repeals made by this Act shall not affect—

(a) the enactments specified in Part V of Schedule 14 to the Finance Act 1971 (charge on death) so far as their operation before repeal falls to be taken into account in chargeable periods to which this Act applies,

(b) the application of the enactments repealed by the 1979 Act to events before 6th April 1965 in accordance with paragraph 31 of Schedule 6 to the Finance Act 1965.

(3) This paragraph has no application to the law relating to the determination of the market value of assets.

27 Where the acquisition or provision of any asset by one person was, immediately before the commencement of this paragraph and by virtue of any enactment, to be taken for the purposes of Schedule 5 to the 1979 Act to be the acquisition or disposal of it by another person, then, notwithstanding the repeal by this Act of that enactment, Schedule 2 to this Act shall also have effect as if the acquisition or provision of the asset by the first-mentioned person had been the acquisition or provision of it by that other person.

PART IV

OTHER GENERAL SAVINGS

28 Where under any Act passed before this Act and relating to a country or territory outside the United Kingdom there is a power to affect Acts passed or in force before a particular time, or instruments made or having effect under such Acts, and the power would, but for the passing of this Act, have included power to change the law which is reproduced in, or is made or has effect under, this Act, then that power shall include power to make such provision as will secure the like change in the law reproduced in, or made or having effect under, this Act notwithstanding that this Act is not an Act passed or in force before that time.

29 (1) The continuity of the law relating to the taxation of chargeable gains shall not be affected by the substitution of this Act for the enactments repealed by this Act and earlier enactments repealed by and corresponding to any of those enactments ("the repealed enactments").

(2) Any reference, whether express or implied, in any enactment, instrument or document (including this Act or any Act amended by this Act) to, or to things done or falling to be done under or for the purposes of, any provision of this Act shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision in the repealed enactments has or had effect, a reference to, or as the case may be, to things done or falling to be done under or for the purposes of, that corresponding provision.

(3) Any reference, whether express or implied, in any enactment, instrument or document (including the repealed enactments and enactments, instruments and documents passed or made after the passing of this Act) to, or to things done or falling to be done under or for the purposes of, any of the repealed enactments shall, if and so far as the nature of the reference permits, be construed as including, in relation to the times, years or periods, circumstances or purposes in relation to which the corresponding provision of this Act has effect, a reference to, or as the case may be to things done or falling to be done under or for the purposes of, that corresponding provision.

SCHEDULE 12

Section 290.

REPEALS

Chapter	Short title	Extent of Repeal
1968 c. 48	International Organisations Act 1968	In Schedule 1, paragraph 24(b).
1970 c. 10	Income and Corporation Taxes Act 1970	The whole Act.
1970 c. 24	Finance Act 1970	Sections 27 and 28.
		Section 29(3), (5), (6), (7) and (9).

		Schedule 3.
		Schedule 6.
1971 c. 68	Finance Act 1971	Section 55.
1973 c. 51	Finance Act 1973	Section 38(1), (3) to (5) and (8).
1974 c. 30	Finance Act 1974	Section 29.
1974 c. 44	Housing Act 1974	Section 11.
1975 c. 45	Finance (No.2) Act 1975	Section 47.
		Section 58.
1976 c. 40	Finance Act 1976	Section 54.
		In section 131(2) the words “and capital gains tax".
1977 c. 36	Finance Act 1977	Sections 41 and 42.
1979 c. 14	Capital Gains Tax Act 1979	The whole Act.
1979 c. 47	Finance (No.2) Act 1979	Section 17.
1980 c. 48	Finance Act 1980	Section 61(2).
		Sections 77 to 84.
		Section 117.
		Schedule 18.
1981 c. 35	Finance Act 1981	Section 38(3) and (4).
		Sections 79 to 91.
		In section 135 the words “capital gains tax and".
1982 c. 39	Finance Act 1982	Section 80.
		Sections 83 to 88.
		Section 148.
		Schedule 13.
1982 c. 53	Administration of Justice Act 1982	Section 46(2)(f).
1983 c. 20	Mental Health Act 1983	In Schedule 4 paragraph 49.
1983 c. 28	Finance Act 1983	Section 34.
		Schedule 6.
1983 c. 49	Finance (No.2) Act 1983	Section 7.
1984 c. 32	London Regional Transport Act 1984	In Schedule 6 paragraphs 7 and 8.
1984 c. 43	Finance Act 1984	Section 44.
		Section 50.

		Section 56(3) and (4).
		Sections 63 to 71.
		Section 79 to 81.
		In section 126(3)(b) the words “and capital gains tax".
		Schedules 11, 13 and 14.
1984 c. 51	Inheritance Tax Act 1984	In Schedule 8 paragraphs 9 to 12 and 23.
1985 c. 54	Finance Act 1985	Sections 67 to 72.
		Section 95(1)(b).
		Schedules 19 to 21.
1985 c. 71	Housing (Consequential Provisions) Act 1985	In Schedule 2 paragraph 18.
1986 c. 41	Finance Act 1986	Sections 58, 59 and 60.
1986 c. 56	Parliamentary Constituencies Act 1986	In Schedule 3 paragraph 6.
1987 c. 16	Finance Act 1987	Section 40.
		Section 68(3).
1987 c. 51	Finance (No.2) Act 1987	Section 64.
		Section 73.
		Sections 79, 80 and 81.
		In Schedule 6, paragraphs 2, 4 and 5.
1988 c. 1	Income and Corporation Taxes Act 1988	Section 122(1)(b) (and the word “and" immediately preceding it), (3) and (8).
		Sections 345 to 347.
		Section 761(4).
		In Schedule 28, paragraph 8(4) and (5).
		In Schedule 29, paragraphs 10(4)(b), 12 and 15 to 28; in the Table in paragraph 32, the entries relating to the Income and Corporation Taxes Act 1970, the Finance Act 1970, the Finance (No.2) Act 1975, the Capital Gains Tax Act 1979, Schedule 18 to the Finance Act 1980, sections 83 and 84 of the Finance Act 1981, Schedule 6 to the

		Finance Act 1983, section 50 of the Finance Act 1984, sections 68, 71 and 72 of, and Schedules 19 and 20 to, the Finance Act 1985 and section 58 of the Finance Act 1986.
1988 c. 39	Finance Act 1988	Section 62 to 64.
		Sections 96 to 104.
		Section 105(1) to (5).
		Sections 106 to 116.
		Section 118.
		In Schedule 6, paragraph 6(5).
		Schedules 8 to 11.
		In Schedule 12, paragraphs 4, 5 and 7(b).
		In Schedule 13, paragraphs 16, 17 and 18.
1988 c. 48	Copyright, Designs and Patents Act 1988	In Schedule 7 paragraph 26.
1989 c. 26	Finance Act 1989	Section 91(2).
		Section 92(3) and in subsection (4) the words “the Capital Gains Tax Act 1979 or any other enactment relating to capital gains tax".
		Section 96(3).
		Section 122.
		Section 123(1)(a).
		Section 124 to 141.
		Section 179(1)(a)(vi).
		In Schedule 12, paragraph 6.
		Schedules 14 and 15.
1989 c. 40	Companies Act 1989	In Schedule 18, paragraph 20.
1990 c. 1	Capital A1lowances Act 1990	In Schedule 1, paragraphs 3 and 9(1) to (3).
1990 c. 29	Finance Act 1990	Section 28(3).
		Sections 31 to 40.
		Sections 46 and 47.

		Section 54.
		Sections 63 to 65.
		Section 70.
		Section 72.
		Section 81(3) and (6).
		Section 83 to 86.
		Section 127(2).
		In Schedule 6, paragraph 10.
		Schedule 8.
		In Schedule 9, paragraphs 1 and 2.
		In Schedule 10, paragraphs 28 and 29(2) and (3).
		In Schedule 12, paragraph 2(2).
		In Schedule 14, paragraphs 17, 18 and 19(2), (3) and (4).
		In Schedule 18, paragraph 3.
1991 c. 21	Disability Living Allowance and Disability Working Allowance Act 1991	In Schedule 2 paragraph 9.
1991 c. 31	Finance Act 1991	Section 57(4).
		Section 67.
		Section 77(2).
		Section 78(2), (3), (6) and (7).
		Sections 83 to 102.
		In Schedule 6, paragraph 6.
		In Schedule 7, paragraphs 14 and 15.
		In Schedule 10, paragraphs 1 and 4.
		Schedules 16 to 18.
1991 c. 52	Ports Act 1991	Section 18(8)(a).
1992 c. 6	Social Security (Consequential Provisions) Act 1992	In Schedule 2, paragraph 51.

STATUTORY INSTRUMENTS

Number	Title	Extent of Repeal
S.I. 1979/1231	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1979	The whole Order.
S.I. 1979/1676	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1979	The whole Order.
S.I. 1980/507	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1980	The whole Order.
S.I. 1980/922	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1980	The whole Order.
S.I. 1980/1910	Capital Gains Tax (Gilt-edged Securities) (No. 3) Order 1980	The whole Order.
S.I. 1981/615	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1981	The whole Order.
S.I. 1981/1879	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1981	The whole Order.
S.I. 1982/413	Capital Gains Tax (Gilt-edged Securities) (No. 1) Order 1982	The whole Order.
S.I. 1982/1774	Capital Gains Tax (Gilt-edged Securities) (No. 2) Order 1982	The whole Order.
S.I. 1983/1774	Capital Gains Tax (Gilt-edged Securities) Order 1983	The whole Order.
S.I. 1984/1966	Capital Gains Tax (Gilt-edged Securities) Order 1984	The whole Order.
S.I. 1986/12	Capital Gains Tax (Gilt-edged Securities) Order 1986	The whole Order.
S.I. 1987/259	Capital Gains Tax (Gilt-edged Securities) Order 1987	The whole Order.
S.I. 1988/360	Capital Gains Tax (Gilt-edged Securities) Order 1988	The whole Order.
S.I. 1989/944	Capital Gains Tax (Gilt-edged Securities) Order 1989	The whole Order.
S.I. 1991/2678	Capital Gains Tax (Gilt-edged Securities) Order 1991	The whole Order.

TABLE OF DERIVATIONS*NOTE:* THE FOLLOWING ABBREVIATIONS ARE USED IN THIS TABLE:

1970	= Income and Corporation Taxes Act 1970 c. 10.
1970(F)	= Finance Act 1970 c. 24.
1973	= Finance Act 1973 c. 51.
HA1974	= Housing Act 1974 c. 44.
1975(2)	= Finance (No. 2) Act 1975 c. 45.
1976	= Finance Act 1976 c. 40.
1977	= Finance Act 1977 c. 36.
1979	= Capital Gains Tax Act 1979 c. 14.
1979(2)	= Finance (No. 2) Act 1979 c. 47.
1980	= Finance Act 1980 c. 48.
1981	= Finance Act 1981 c. 35.
1982	= Finance Act 1982 c. 39
AJA1982	= Administration of Justice Act 1982 c. 53.
1983(2)	= Finance (No. 2) Act 1983 c. 49.
LRTA1984	= London Regional Transport Act 1984 c. 32.
1984	= Finance Act 1984 c. 43.
ITA	= Inheritance Tax Act 1984 c. 51.
CCCPA	= Companies Consolidation (Consequential Provisions) Act 1985 c. 9.
1985	= Finance Act 1985 c. 54.
HCPA	= Housing (Consequential Provisions) Act 1985 c. 71.
1986	= Finance Act 1986 c. 41.
PCA	= Parliamentary Constituencies Act 1986 c. 56.
1987	= Finance Act 1987 c. 16.
1987(2)	= Finance (No. 2) Act 1987 c. 51.
ICTA	= Income and Corporation Taxes Act 1988 c. 1.
1988	= Finance Act 1988 c. 39.
CDPA1988	= Copyright, Designs and Patents Act 1988 c. 48.
HA1988	= Housing Act 1988 c. 50.

1989	= Finance Act 1989 c. 26.
CAA	= Capital Allowances Act 1990 c. 1.
1990	= Finance Act 1990 c. 29.
DLA1991	= Disability Living Allowance and Disability Working Allowance Act 1991 c. 21 Sch. 2 §9; Disability Living Allowance and Disability Working Allowance (Northern Ireland Consequential Amendments) Order 1991 Art. 2.
1991	= Finance Act 1991 c. 31.
SSCP	= Security Security (Consequential Provisions) Act 1992 c. 6; Security Security (Consequential Provisions) Act (Northern Ireland) 1992 c. 9.
SI 1988/744	= The Finance (No. 2) Act 1987 (Commencement) Order 1988.
SI 1989/1299	= The Income Tax (Stock Lending) Regulations 1989.
SI 1989/1788	= The Finance Act 1989 (Repeal of Tithe Redemption Enactments) (Appointed Day) Order 1989.
SI 1991/736	= Capital Gains (Annual Exempt Amount) Order 1991.

Provision of Bill	**Derivation**
1	1979 s. 1.
2(1)	1979 s. 2.
(2)	1979 s. 4(1).
(3)	1979 s. 29(5).
3(1)	1979 s. 5(1); 1980 s. 77(2); 1982 s. 80(1).
(2)-(4)	1979 s. 5(1A), (1B), (1C); 1982 s. 80(2); S.I. 1991/736.
(5), (6)	1979 s. 5(4), (5); 1982 s. 80(1).
(7)	1979 Sch. 1 §4.
(8)	1979 s. 5(6).
4	1988 s. 98.
5	1988 s. 100.
6	1988 s. 102; 1991 Sch. 6 §6.
7	1979 s. 7; 1980 s. 61(2).
8	ICTA s. 345, 834.

9	1979 s. 18(1)-(3).
10(1)	1979 s. 12(1).
(2)	1979 s. 12(1A); 1989 s. 128(2).
(3)	ICTAs. 11(2)(b), 6(4).
(4)	1979 s. 12(2).
(5)	1979 s. 12(2A); 1989 s. 126(2).
(6)	1979 s. 12(3).
11	1979 s. 18(5)-(8); ICTA Sch. 29 §16.
12	1979 s. 14.
13(1)-(9)	1979 s. 15(1)-(9).
(10)	1981 s. 85.
(11)	1979 s. 15(10).
14	1979 s. 16.
15	1979 s. 28(1), (2), 30; 1982 s. 86.
16	1979 s. 29(1)-(4).
17	1979 s. 29A(1), (2); 1981 s. 90.
18	1979 s. 62; 1981 s. 90(3)(a), (b).
19	1985 s.71(1)-(4), (6), (7).
20	1985 Sch. 21.
21	1979 s. 19(1), (2).
22	1979 s. 20.
23	1979 s. 21.
24	1979 s. 22.
25	1989 s. 127; 1990 Sch. 9 §2.
26	1979 s. 23.
27	1979 s. 24.
28	1979 s. 27.
29	1979 s. 25.
30(1)	1979 s. 26(1); 1989 s. 135(1).
(2)	1979 s. 26(1A); 1989 s. 135(1).
(3)-(7)	1979 s. 26(2)–(6).
(8)	1979 s. 26(7); 1989 s. 135(2).
(9)	1979 s. 26(8); 1989 s. 135(3).
31	1979 s. 26A; 1989 s. 136.
32	1979 s. 26B; 1989 s. 136.

33	1979 s. 26C; 1989 s. 136.
34	1979 s. 26D; 1989 s. 137.
35	1988 s. 96; Sch.8 §1(3); 1989 Sch. 15 §4(2); 1990 s. 70(7)(b), Sch. 12 §2(2); 1979 s. 28(3); 1991 s. 78(7).
36	1988 s. 97.
37(1)-(3)	1979 s. 31(1)-(3); CAA Sch. 1 §3.
(4)	1979 s. 31(4); ICTA Sch. 29 §17.
38	1979 s. 32.
39	1979 s. 33; ICTA Sch. 29 §19.
40	1970 s. 269; 1981 s. 38(3), (4).
41	1979 s. 34; 1988 Sch. 13 §16; CAA Sch. 1 §3.
42	1979 s. 35.
43	1979 s. 36.
44	1979 s. 37.
45	1979 s. 127.
46	1979 s. 38.
47	1979 s. 39.
48	1979 s. 40(2).
49	1979 s. 41.
50	1979 s. 42.
51	1979 s. 19(4), (5).
52	1979 s. 43.
53	1982 s. 86(2)-(4), (6); 1985 Sch. 19 §1.
54	1982 s. 87; 1985 Sch. 19 §2.
55(1)	1985 s. 68(4).
(2)	1985 s. 68(5); 1988 Sch. 8 §11.
(3)	1985 s. 68(5A); 1988 s. 118.
(4)	1985 s. 68(6).
(5)	1985 s. 68(7), (7A); 1988 s. 118; 1989 Sch. 15 §4; 1990 s. 70(7); 1991 s. 78(6), 99(1).
(6)	1985 s. 68(8).
56(1)	1982 Sch. 13 §1; 1985 Sch. 19 §5(1).
(2)	1982 Sch. 13 §2; 1985 Sch. 19 §5(2)(b).
57	1982 Sch. 13 §4.

58	1979 s. 44.
59	1979 s. 60.
60	1979 s. 46.
61	1979 s. 99; AJA 1982 s. 46(2)(f).
62	1979 s. 49; 1981 s. 90(3)(a).
63	1979 s. 50.
64	1979 s. 47.
65	1979 s. 48.
66	1979 s. 61.
67	1980 s. 79; 1979 s. 56A; 1982 s. 84; 1989 s. 124(3).
68	1979 s. 51.
69	1979 s. 52.
70	1979 s. 53; 1981 s. 86.
71	1979 s. 54; 1981 s. 87.
72	1979 s. 55(1),(3)-(6); 1982 s. 84.
73(1)	1979 s. 56(1); 1981 s. 87.
(2), (3)	1979 s. 56(1A), (1B); 1982 s. 84(2).
74	1979 s. 56A; 1982 s. 84; 1989 Sch. 14 §6(1).
75	1979 s. 57.
76	1979 s. 58.
77	1988 Sch. 10 §1-4.
78(1), (2)	1988 Sch. 10 §5(1), (2).
(3)	1988 Sch. 10 §5(3); 1991 s. 89(3).
79	1988 Sch. 10 §6-9.
80	1991 s. 83.
81	1991 s. 84.
82	1991 s. 85.
83	1991 s. 86.
84	1991 s. 87.
85(1)	1981 s. 88(1).
(2)-(9)	1991 s. 88(1)-(8).
86(1)-(3)	1991 Sch. 16 §1(1)-(3).
(4)	1991 Sch. 16 §2.
(5)	

87(1), (2)	1981 s. 80(1), (2).
(3)	1980 s. 80(2A); 1991 s. 89(2).
(4)-(7)	1981 s. 80(3)-(6).
(8)	1981 s. 80(6A); 1991 Sch. 18 §1.
(9)	1981 s. 80(7).
(10)	1981 s. 80(1), (8); 1984 s. 70(3).
88	1981 s. 80A; 1991 Sch. 18 §2.
89	1981 s. 81; 1991 Sch. 18 §3.
90	1981 s. 82.
91	1991 Sch. 17 §4.
92(1)	1991 Sch. 17 §2(3).
(2)	1991 Sch. 17 §2(2), (4), (5).
(3)	1991 Sch. 17 §3(1), (2).
(4)-(6)	1991 Sch. 17 §3(3)-(5).
93(1)	1991 Sch. 17 §5(1)(a), (b), (d), 6(1)(a), (b), (d).
(2)	1991 Sch. 17 §5(1)(c), (2), (3).
(3)	1991 Sch. 17 §6(1)(c), (2), (3).
(4)	1991 Sch. 17 §7.
94	1991 Sch. 17 §8.
95	1991 Sch. 17 §9.
96	1981 s. 82A; 1991 Sch. 18 §4.
97(1)(a)	1981 s. 83(1), (11); 1991 Sch. 17 §1(c), 18 §6(2).
(b)	1981 s. 83(1A); 1991 Sch. 18 §6(3).
(2)-(6)	1981 s. 83(2)-(6); 1990 Sch. 14 §18; 1991 Sch. 18 §6(4), (5).
(7)	1981 s. 83(7); 1984 s. 71; 1991 Sch. 18 §6(5).
(8)-(10)	1981 s. 83(8)-(10); 1991 Sch. 18 §5.
98	1981 s. 84.
99(1)	1979 s. 93.
(2)	1979 s. 92(1)(a), (b); 1987 s. 40(3).
(3)	1979 s. 92(2), (3)(a); 1987 s. 40(4).
100(1)	1980 s. 81(1).
(2)	1979 s. 96.

(3)	1979 s. 92(1)(d).
101	1979 s. 98; 1980 s. 81.
102	1989 s. 140.
103	1990 s. 54.
104(1), (2)	1985 Sch. 19 §8, 9(1), 17(1).
(3)	1979 s. 66(3), (4); 1985 s. 68(9), (10), Sch. 19 §8(1)(c), 9(3).
(4)	1985 Sch. 19 §8(2).
(5)	1985 Sch. 19 §8(3).
(6)	1985 Sch. 19 §10.
105	1979 s. 66(1), (2); 1985 Sch. 19 §17(2).
106	1975(2) s. 58; 1979 Sch. 7.
107(1), (2)	1985 Sch. 19 §16(1), (2).
(3)-(6)	1985 Sch. 19 §18
(7)-(9)	1985 Sch. 19 §19.
108	1982 s. 88; 1985 Sch. 19 §3.
109(1)-(3)	1982 Sch. 13 §6(1), (2), 7(1), 8(1), (2)(a), (3), 9, 10.
(4), (5)	1985 Sch. 19 §6(3), (4).
(6)	1985 Sch. 19 §7(2), (3).
110(1)-(3)	1985 Sch. 19 §11.
(4)	1985 Sch. 19 §12.
(5)-(9)	1985 Sch. 19 §13.
(10), (11)	1985 Sch. 19 §14.
111	1988 s. 113.
112	1985 Sch. 19 §21(2), (3), 20.
113	1982 Sch. 13 §6, 1985 Sch. 19 §5(5).
114	1985 Sch. 19 §15.
115	1979 s. 67; 1986 s. 59.
116(1)	1984 s. 64(7)
(2)-(4)	1984 Sch. 13 §7.
(5)-(8)	1984 Sch. 13 §8.
(9)	1984 Sch. 13 §9.
(10), (11)	1984 Sch. 13 §10; 1985 s. 67(2)(c); 1989 s. 139; 1990 s. 70(6).
(12)-(14)	1984 Sch. 13 §11.

(15)	1984 Sch. 13 §12; 1990 s. 85.
117(1)	1984 s. 64(2)(b), (c), (2A); 1991 s. 98.
(2)	1984 s. 64(3).
(3)	1984 s. 64(3A)-(3D); 1989 s. 139; 1990 Sch. 10 §28.
(4)-(6)	1984 s. 64(3E)-(3G); 1991 Sch. 10 §1.
(7), (8)	1984 s. 64(4), (5); 1989 Sch. 14 §6(4).
(9)	1984 s. 64(5A)-(5D); 1989 s. 139; 1990 Sch. 10 §28.
(10)	1984 s. 64(6); 1989 s. 139.
(11)(a)	1984 s. 64(8).
(11)(b), (12)	1984 s. 64(9)-(11); 1991 Sch. 10 §1.
(13)	1991 Sch. 10 §1(5).
118	1979 s. 132A; ICTA Sch. 29 §23; 1989 s. 96(3).
119	1979 s. 33A; ICTA Sch. 29 §20.
120(1)	1988 s. 84.
(2)-(7)	1979 s. 32A; ICTA Sch. 29 §18.
121	1979 s. 71.
122	1979 s. 72
123	1979 s. 73.
124	1979 s. 74.
125	1979 s. 75; 1988 Sch. 8 §7.
126	1979 s. 77; 1982 Sch. 13 §5(3).
127	1979 s. 78.
128(1)	1979 s. 79(1).
(2)	1979 s. 79(1), first and second provisos; 1981 s. 91.
(3), (4)	1979 s. 79(2), (3).
129	1979 s. 80.
130	1979 s. 81.
131	1982 Sch. 13 §5(1), (2).
132	1979 s. 82; 1982 Sch. 13 §5(3).
133	1979 s. 83.
134(1)	1979 s. 84(1).
(2)	1979 s. 84(2), (3).

(3)	1979 s. 84(4); 1985 s. 67(2).
(4)-(6)	1979 s. 84(5)-(7).
135	1979 s. 85; 1982 Sch. 13 §5(3).
136	1979 s. 86.
137	1979 s. 87; 1987(2) Sch. 6 §5.
138	1979 s. 88.
139(1), (2)	1970 s. 267(1), (2); 238(4).
(3)	1970 s. 267(2A); 1990 s. 65(1).
(4)	1970 s. 267(3); 1980 s. 81(2).
(5)-(7)	1970 s. 267(3A)-(3C); 1977 s. 41.
(8)	1987(2) Sch. 6 §2.
(9)	1970 s. 267(4).
140	1970 s. 268A; 1977 s. 42.
141	1979 s. 89; 1981 s. 91(2).
142	1979 s. 90; 1981 s. 90(3).
143(1), (2)	1985 s. 72(1), (2); 1987(2) s. 81(1), (2).
(3), (4)	1985 s. 72(2A), (2B); 1987(2) s. 81(3).
(5), (6)	1985 s. 72(3), (4).
144(1)-(4)	1979 s. 137(1)-(4); 1987(2) s. 81.
(5)-(9)	1979 s. 137(6)-(10); 1987(2) s. 81.
145	1982 Sch. 13 §7.
146	1979 s. 138; 1980 s. 84(5), (6); 1987(2) s. 81.
147	1979 s. 139.
148	1991 s. 102.
149	1991 Sch. 10 §4.
150	1979 s. 149C; 1985 Sch. 19 §16(3); ICTA Sch. 29 §26; 1990 Sch. 14 §17; 1991 s. 99(2).
151(1), (2)	1979 s. 149D(1), (2); ICTA Sch. 29 §26.
(3)	1979 s. 149D(2A); 1988 s. 116.
152(1), (2)	1979 s. 115(1), (2).
(3), (4)	1979 s. 115(3).
(5)-(8)	1979 s. 115(4)-(7).
(9)	1979 s. 115(7A); 1988 Sch. 8 §9.
(10), (11)	1979 s. 115(8), (9).
153	1979 s. 116.

154(1), (2)	1979 s. 117(1), (2); 1990 s. 40(2).
(3), (4)	1979 s. 117(2A), (3); 1990 s. 40(3), (4).
(5)-(7)	1979 s. 117(4)-(6).
155	1979 s. 118; 1988 s. 112.
156	1979 s. 119.
157	1979 s. 120; 1985 s. 70(9).
158	1979 s. 121.
159	1989 s. 129.
160	1989 s. 133.
161	1979 s. 122.
162	1979 s. 123.
163	1985 s. 69; 1991 s.100.
164	1985 s. 70(1)-(8); 1991 s. 100.
165(1), (2)	1979 s. 126(1), (1A); 1989 Sch. 14 §1.
(3)	1979 s. 126(2); 1985 s. 70(9); 1989 Sch. 14 §1(3).
(4)-(6)	1979 s. 126(3)-(5).
(7)-(9)	1979 s. 126(6)-(8); 1981 s. 90(3)(a); 1985 s. 70(9).
(10), (11)	1979 s. 126(9), (10); 1989 Sch. 14 §1.
166	1979 s. 126A; 1989 Sch. 14 §2.
167	1979 s. 126B; 1989 Sch. 14 §2.
168	1981 s. 79; 1989 Sch. 14 §6; 1991 s. 92(2).
169	1986 s. 58; 1989 Sch. 14 §6.
170(1)	1970 s. 238(4); 1988 Sch. 14 Part V Note 3
(2)	1970 s. 272(1); 1989 s. 138(1); 1990 s. 70(2).
(3)-(8)	1970 s. 272(1A)-(1F); 1989 s. 138(2); 1990 s. 86.
(9)	1970 s. 272(2); 1987(2) s. 79; CCCPA Sch. 2.
(10), (11)	1970 s. 272(3), (4); 1989 s. 138(3), (4).
(12), (13)	1970 s. 272(5).
(14)	1970 s. 272(6); LRTA 1984 Sch. 6 §7.
171(1)	1970 s. 273(1).
(2)	1970 s. 273(2); 1980 s. 81(4); 1987(2) s. 64(3); 1990 s. 65(2).
(3)	1970 s. 273(2A); 1988 s. 115.

(4)	1970 s. 273(3).
172	1970 s. 273A; 1990 s. 70.
173	1970 s. 274.
174(1)-(3)	1970 s. 275(1), (1A), (1B); 1990 s. 70(3).
(4)	1970 s. 275(2).
(5)	1970 s. 275(3); 1980 s. 81(5).
175(1)	1970 s. 276(1); 1987(2) s. 64(4).
(2)	1970 s. 276(1A); 1987(2) s. 64(4); 1990 s. 65(3).
(3)	1970 s. 276(2).
(4)	1990 s. 65(6).
176	1970 s. 280; CCCPA Sch. 2; 1988 Sch. 8 §6.
177	1970 s. 281; 1990 s. 70(4).
178(1)-(3)	1970 s. 278(1)-(3).
(4)-(6)	1970 s. 278(3B)-(3D); 1989 s. 138(5).
(7)	1970 s. 278(3F); 1989 s. 138(5).
(8)-(10)	1970 s. 278(4)-(6).
179(1)-(3)	1970 s. 278(1)-(3); 1987(2) Sch. 6 §4(2).
(4)	1970 s. 278(3A); 1987(2) Sch. 6 §4(2).
(5)-(9)	1970 s. 278(3B)-(3F); 1989 s. 138(5).
(10)	1970 s. 278(4).
(11)	1970 s. 278(5); 1987(2) Sch. 6 §4(3).
(12)	1970 s. 278(5A); 1987(2) Sch. 6 §4(4).
(13)	1970 s. 278(6).
180(1), (2)	1970 s. 278(8); 1987(2) s. 95(2); 1989 s. 138(7).
(3)-(7)	1989 s. 138(8)-(12).
181	1970 s. 278A; 1970(F) s. 27.
182	1988 Sch. 11 §1, 2.
183	1988 Sch. 11 §3.
184	1988 Sch. 11 §4, 5, 6; 1990 s. 70(8).
185	1988 s. 105(1)-(5).
186	1988 s. 106.
187	1988 s. 107.
188	1989 s. 132.
189	ICTA s. 346.

190	ICTA s. 347.
191	1989 s. 134.
192	1980 s. 117, Sch. 18 §9, 10, 15, 23.
193	1987(2) s. 80.
194	1988 s. 62.
195	1988 s. 63.
196	1988 s. 64.
197	1984 s. 79.
198	1984 s. 80.
199	1989 s. 131.
200	1990 s. 64.
201(1), (2)	ICTAs. 122(1).
(3)	ICTAs. 122(3).
(4)	ICTAs. 122(8).
202(1), (2)	1970(F) s. 29(5), Sch. 6 §3.
(3), (4)	1970(F) Sch. 6 §4.
(5), (6)	1970(F) Sch. 6 §5.
(7), (8)	1970(F) Sch. 6 §6.
(9)-(11)	1970(F) Sch. 6 §7.
203	1970(F) s. 29(6), (7), (9), Sch. 6 §8, 9.
204	1979 s. 140, 149A(2).
205	1979 s. 141.
206	1979 s. 142; 1988 s. 101.
207(1)-(3)	1979 s. 142A(1)-(3); ICTA Sch. 29 §24.
(4), (5)	1979 s. 142A(4A), (4B); 1989 s. 91; S.I. 1989/1299.
(6)	1979 s. 142A(4).
208	1985 Sch. 19 §22, 23.
209	1979 s. 142A(5-7); 1989 s. 92.
210	1979 s. 143.
211	1970 s. 267A; 1990 Sch. 9 §1.
212	1990 s. 46; 1991 Sch. 7 §14.
213	1990 s. 47.
214	1990 Sch. 8; 1991 Sch. 7 §15.
215	1979 s. 149A(1); ICTA Sch. 29 §26.

216	1988 Sch. 12 §1, 4.
217	1988 Sch. 12 §5.
218	1970 s. 342; HCPA Sch. 2 §18; 1991 s. 95, 96.
219	1970 s. 342A; HA 1974 s. 11; HCPA Sch. 2 §18; 1991 s. 95, 96.
220	1970 s. 342B; 1984 s. 56(3).
221	1979 s. 123A; ICTA Sch. 29 §22.
222	1979 s. 101; ICTA Sch. 29 §21; 1991 s. 93.
223(1)-(3)	1979 s. 102(1)-(3); 1991 s. 94.
(4)	1980 s. 80(1); 1991 s. 94.
(5), (6)	1979 s. 102(5), (6); 1991 s. 94.
(7)	1979 s. 102(3), (4); 1988 Sch. 8 §8.
224	1979 s. 103.
225	1979 s. 104.
226(1), (2)	1979 s. 105(1), (2); 1988 s. 111(1), (2).
(3)	1988 s. 111(3).
(4)-(7)	1979 s. 105(3)-(6).
227	1990 s. 31.
228	1990 s. 32.
229	1990 s. 33.
230	1990 s. 34.
231	1990 s. 35.
232	1990 s. 36.
233	1990 s. 37.
234	1990 s. 38.
235	1990 s. 39.
236	1990 s. 40(5)-(8).
237	1979 s. 144.
238	1979 s. 144A; ICTA Sch. 29 §25.
239	1979 s. 149; 1981 s. 90(3); ITA Sch. 8 §11; CCCPA Sch. 2.
240	1979 s. 106, 129.
241(1)	1984 s. 50(1).
(2)	1984 s. 50(2)-(9).
(3)	1984 Sch. 11 §1; 1985 s. 70(10).

(4)-(8)	1984 Sch. 11 §4-7.
242	1979 s. 107; 1984 s. 63; 1986 s. 60.
243	1979 s. 108.
244	1979 s. 109.
245	1979 s. 110.
246	1979 s. 111.
247	1979 s. 111A; 1982 s. 83.
248	1979 s. 111B; 1982 s. 83.
249	1979 s. 112.
250	1979 s. 113; 1988 Sch. 6 §6(5).
251	1979 s. 134.
252	1979 s. 135.
253(1)-(5)	1979 s. 136(1)-(5).
(6)-(8)	1979 s. 136(5A)-(5C); 1990 s. 83.
(9)	1979 s. 136(6); 1990 s. 83.
(10)-(12)	1979 s. 136(7)-(9).
(13)	1979 s. 136(9A); 1990 s. 83.
(14), (15)	1979 s. 136(10), (11); 1989 Sch. 12 §6.
254	1979 s. 136A; 1990 s. 84.
255	1979 s. 136B; 1990 s. 84.
256	1979 s. 145.
257	1979 s. 146; 1981 s. 90; ITA Sch. 8 §9.
258	1979 s. 147; ITA Sch. 8 §10; 1985 s. 95(1)(b).
259	1979 s. 146A; 1989 s. 125.
260	1979 s. 147A; 1989 Sch. 14 §4.
261	1979 s. 147B; 1989 Sch. 14 §4.
262	1979 s. 128; 1989 s. 123.
263	1979 s. 130.
264	1983(2) s. 7; PCA Sch. 3 §6.
265	1984 s. 126; 1985 s. 96.
266	1976 s. 131.
267	1991 s. 78(1)-(3), (8).
268	1979 s. 131.
269	1979 s. 133.

270	1981 s. 135.
271	1979 s. 149B; ICTA Sch. 29 §26; 1988 Sch. 12 §7(b), Sch. 13 §17; 1990 s. 28(3), 81, Sch. 18 §3; 1991 s. 57(4).
272	1979 s. 150(1)-(4), (6).
273	1979 s. 152.
274	1979 s. 153.
275	1979 s. 18(4); 1984 s. 69; CDPA 1988 Sch. 7 §26.
276(1)	1973 s. 38(1); ICTA s. 830(1).
(2), (3)	1973 s. 38(2), (3).
(4)-(6)	1973 s. 38(3A)-(3C); 1984 s. 81(2); 1989 s. 130(1).
(7)	1973 s. 38(4); ICTA Sch. 29 §12.
(8)	1973 s. 38(5); 1984 s. 81.
277	1979 s. 10.
278	1979 s. 11.
279(1)-(6)	1979 s. 13; 1991 s. 97.
(7)	1988 s. 104.
(8)	1991 s. 97.
280	1979 s. 40(1).
281	1979 s. 7A; 1989 Sch. 14 §5.
282	1979 s. 59.
283(1)	1975(2) s. 47(1); 1989 s. 179(1).
(2)	1975(2) s. 47(4).
(3)	1975(2) s. 47(8).
(4), (5)	1975(2) s. 47(11),(12).
284	1979 s. 154.
285	1987(2) s. 73; ICTA s. 841(3).
286	1979 s. 63 ICTA Sch. 29 §15.
287	1979 s. 5(1C), 92(3), 102(5), (7), 137(10), 142A(5), 149D(3), Sch. 2 §1; 1984 s. 64(3F), (12), 126(1), (4); 1985 s. 96(1), Sch. 19 §21(4); 1987(2) s. 73, 81, 95(2), Sch. 6 §2, 4, 5; ICTA s. 828, Sch. 29 §24, 26; 1989 s. 92(6); 1990 s. 46(9); 1991 s. 94, Sch. 10 §1, Sch. 17 §4(8).

288	1979 s. 155; 1979 s. 64; 1984 s. 64; 1985 s. 72(6); ICTA Sch. 29 §27; 1988 Sch. 13 §18; 1989 Sch. 14 §6; 1990 s. 127(2).
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291	
Sch. 1 §1(1)	1979 Sch. 1 §5(1); 1980 s. 77(4)(c); 1981 s. 89(2); DLA 1991.
(2)	1979 Sch. 1 §5(1A); 1981 s. 89(3).
(3)	1979 Sch. 1 §5(1B); 1981 s. 89(3); 1982 s. 80(3).
(4)	1979 Sch. 1 §5(1C); 1981 s. 89(3).
(5)	1979 Sch. 1 §5(1D); 1981 s. 89(3); 1982 s. 80(3).
(6)	1979 Sch. 1 §5(2); Mental Health Act 1983 Sch. 4 §49; 1981 s. 89(4); DLA 1991; SSCP.
(7)	1979 Sch. 1 §5(3); 1981 s. 89(5).
2(1)	1979 Sch. 1 §6(1); 1980 s. 78(2).
(2)	1979 Sch. 1 §6(2); 1980 s. 78(3); 1982 s. 80(3)(b), (d).
(3)	1979 Sch. 1 §6(3); 1980 s. 78(3); 1982 s. 80(3)(e).
(4)	1979 Sch. 1 §6(4); 1980 s. 78(3); 1982 s. 80(3)(c), (d).
(5)	1979 Sch. 1 §6(5); 1980 s. 78(3).
(6)	1979 Sch. 1 §6(6); 1980 s. 78(3); 1982 s. 80(3)(d).
(7)-(9)	1979 Sch. 1 §6(7)-(9); 1980 s. 78(3).
Sch. 2 §1-3	1979 Sch. 5 §1-3; 1982 Sch. 13 §11.
4(1)	
(2)	1979 Sch. 5 §4(1).
(3)-(7)	1979 s. 65.
(8)-(13).	1979 Sch. 5 §4(2)-(7).
5-8	1979 Sch. 5 §5-8.
9-15	1979 Sch. 5 §9, 10.
16	1979 Sch. 5 §11.
17	1979 Sch. 5 §12.
18	1979 Sch. 5 §13; 1982 Sch. 13 §11.

19-23	1979 Sch. 5 §14-18.
Sch. 3 §1	1988 Sch. 8§1; 1989 Sch. 15§4(2); 1990 s. 70(7)(b),Sch. 12§2(2); 1991 s. 78(7).
2	1988 Sch. 8§2.
3	1988 Sch. 8§3.
4	1988 Sch. 8§4; 1989 Sch. 15§3.
5	1988 Sch. 8§5.
6	1988 Sch. 8§10.
7	1988 Sch. 8§12; 1990 s. 63.
8	1988 Sch. 8§13; 1989 Sch. 15§5.
9	1988 Sch. 8§14.
Sch. 4 §1	1988 Sch. 9§1; 1991 s. 101(2).
2	1988 Sch. 9§2; 1991 s. 101(3), (4).
3	1988 Sch. 9§2A; 1991 s. 101(5).
4(1)-(4)	1988 Sch. 9§3; 1989 Sch. 15§2; 1991 s. 101(6)-(8)
(5)	1989 Sch. 15§1.
5-8	1988 Sch. 9§4-7.
9	1988 Sch. 9§8; 1991 s. 101(9).
Sch. 5	1991 Sch. 16§3-16.
Sch. 6 §1-12	1985 Sch. 20§1-12; 1991 s. 100.
13	1985 Sch. 20§13; 1988 s. 110; 1991 s. 100.
14	1985 Sch. 20§14.
15	1985 Sch. 20§15; 1988 s. 110.
16	1985 Sch. 20§16; 1988 s. 110.
Sch. 7 §1	1979 Sch. 4§1; ITA 1984 Sch. 8§12; 1989 Sch. 14§3(2).
2	1979 Sch. 4§2; 1989 Sch. 14§3(3).
3	1979 Sch. 4§3; ITA 1984 Sch. 8§12; 1989 Sch. 14§3(4).
4	1979 Sch. 4§4; 1989 Sch. 14§3(5).
5, 6	1979 Sch. 4§5, 6; 1989 Sch. 14§3(6).
7	1979 Sch. 4§7; 1989 Sch. 14§3(7).
8	1979 Sch. 4§8; 1985 s. 70(9).
Sch. 8	1979 Sch. 3.
Sch. 9 §1-3	1979 Sch. 2§1-3.

Part II	1979 Sch. 2 Part II together with the securities specified in the Capital Gains Tax (Gilt-edged Securities) Orders 1979-1991 made under paragraph 1 of Schedule 2 to the 1979 Act; Gas Act 1986 (c. 44) s. 50(3).

Status:
Point in time view as at 29/07/1999.

Changes to legislation:
Taxation of Chargeable Gains Act 1992 is up to date with all changes known to be in force on or before 12 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.